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THE NEW REPUBLIC

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Nixonomics: a Policy of Passivity

Democratic Party Reform in 1972

Melvin Laird and CBS

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WOULD YOU LEND $25 TO A COLLEGE THAT DEVELOPS AND GRADUATES SOCIAL AND POLITICAL ACTIVISTS?

Citizens College Organizing Committee now offers you this opportunity! You can now help (with a $25 loan) educate students who will utilize scholarship in the Social Sciences to influence *Due Process Radicalism* for educational, social and political change.

We intend to link thought with action; theory with practice; intellect with activism. Philosophers, theoreticians and historians will be linked to the practical realities of the acute social problems that are tearing our society apart.

The need for developing leadership among the young is painfully obvious—particularly in finding solutions to war; military-industrial power; racism; poverty; welfare; pollution; over-population; total equal rights for minorities, students and women; malnutrition; deception and fraud in government and business; **RIGIDIFIED BUREAUCRACY;** mass media manipulation and mediocrity.

However, the frustrations, the desperate futility of young people—unable to influence social or political change—inevitably has led to a plague of cynicism and escapism escalating into drugs, riots, sexual exploitation and promiscuity, mysticism, tarot cards, astrology, energy transformation, dropping out, copping out and selling out.

By ignoring the acute problems that are driving young people to despair—by perpetuating the "old" values of nationalism, militarism, racism and materialism lived by a large proportion of adult Americans —the gap between young and old in our country continues to widen. It's time to stop this kind of madness and divisiveness!

So, a group of older and younger **BLACK, BROWN AND WHITE** men and women have joined together—with a similar set of values—and have formed the Citizens College Organizing Committee. The following is an outline of our plans:

Unlike any other college or university, Citizens College will educate students in the understanding of due process radical change in education and politics, and will train students to become politicians, organizers, teachers, social scientists, writers, researchers, communication media professionals, and architects of new careers in public and private regulatory agencies in this orientation. In place of traditional majors, students will study these vital areas:

- Consumer fraud and action
- The Courts (Crime, Justice and the Judicial Processes)
- Legislation and Politics
- Bureaucratic-Repressive Education
- Labor Relations and Unions
- City and Community (Power and De-centralization)
- The Military and Science Establishment and Industrial-Technological Society
- Media—Reporting and Broadcasting—Publishing
- International Relations (U.N., The World Court)
- Banking and Insurance
- Housing and Transportation
- Health Services—Psychology, Social Work, Guidance, Hospital Management, Distribution
- Poverty and Welfare Politics
- The Human Utilization of the Environment.

SELF-GENERATION

Students will spend alternate semesters working outside the college, testing the theories they study within the college in interdisciplinary seminars. When they return they will be veterans of battle with the "real world" bureaucracies; and then they will be able to reinvestigate and reinterpret the theories they started with as part of a self-generating empirical educational process.

TO ACHIEVE THE GOAL OF SELF-GENERATION *economically* — for our students and the college — the college will conduct its own generic drug and general store, its own laundromats, its own snack-juke bar, its own infant and child-care centers, its own cafe, its own book exchange, its own newspaper and radio station, etc. Since there will be no divvie or share or stock holders — all profits from these Citizens College self-generating goods and services will be plowed back into first—repaying your loans to us; then into loans to some of our students for tuition, room and board. These loans will be repaid by the students as a result of their alternate work semesters later each year.

Our architects, for example, are thinking about designing our own garden terrace apartments—for rental—out of structurally designed systems put together by *teams of our students* before the opening of the college's first semester. Thus the students will actually help build their own college; earn their first semester's tuition while circumventing the costly, discriminatory building trades union approach to routinized bureaucratic building.

There will be no departmental fragmentation, no separate departments or separate scholarly disciplines at Citizens College—as is the case in most colleges or universities. There will also be no grades —only "Credit or No Record."

STUDENTS

Students of Citizens College will have an equal voice and vote in hiring and firing faculty, in curriculum and in the governance of the college. Students won't hurt that which they helped to build and run! A minimum of ⅓ of all students will consist of Blacks, Puerto Ricans, Mexican Americans and Indians selected for ability and potential (ghetto, barrio and reservation) community leadership. Students who expect that at Citizens College they will freak-out on hard drugs, sexual crash-padding, booze or mysticism; those students who plan to become involved in violent and/or anarchic actions (infringing on others' civil liberties or rights) or revert to nihilistic "trashing" or commune cop-outs should not apply. Change *now*, radical change, within the system—in non-violent ways—expresses the college's values which are not up for grabs.

FACULTY

We are selecting a brilliant and iconoclastic faculty, who, although scholars and intellectuals, have proven that they are educationally and politically effective; who have not compromised and sold out, people in whom no generation gap exists, and whom young people can look up to and admire as adults. Intellectual activists like Lowell Dodge, director of the Center For Auto Safety,* and Marcus Raskin, co-director of The Institute For Policy

*And also co-author with Ralph Nader of *What to Do With Your Bad Car: An Action Manual for Lemon Owners.*

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Studies, have agreed to join our faculty on a part-time basis.

ADMINISTRATION

Citizens College will have absolutely *no full-time* professional administrators. Individuals responsible for the day to day functioning of the college will be appointed by the Board of Trustees, consisting of 3 elected students, 3 elected faculty members, 3 original organizers and 3 loanees elected by you. These individuals will divide their time between the classroom and their assigned administrative responsibilities.

PHYSICAL PLANT

The college will rent, not own, garden terrace apartments at a site in southern New Jersey, for student housing, offices and livingroom classrooms. We will avoid the customary edifice complex and annual building deficit endemic to most institutions of higher education.

OUR SUPPORTERS

If you crave an alternative to the depersonalized, bureaucratic, value-free lecture-memorize-and-regurgitate practices of most colleges:

If you think your ideas and proposed actions parallel those of Ralph Nader, John Gardner, Julian Bond, Marcus Raskin, Allard Lowenstein, Cesar Chavez, Margaret Mead, the late Martin Luther King, Bella Abzug, Shirley Chisolm and George McGovern:

If you are sympathetic to the views of organizations like SANE, ACLU, The Reform Democrats, The California Democratic Council, Common Cause, Nation, I. F. Stone's Bi-Weekly, etc:

If you like most of our values and goals:

Join us by lending $25. You will receive a promissory note from the college and will be repaid in five years—if we succeed. Although we have accepted a few loans of $10,000—the maximum amount we will allow—your $25 minimum loan entitles you to the *same one man one vote* as theirs.

Loans have already been received from citizens like Harvey Swados, writer; Dwight MacDonald, writer-critic; Stewart Stern, screen writer; William Lederer, writer; Raymond Stewart, inventor; Louis Licht, attorney; Dr. A. Sellers; R. Beck, teacher; John Livingston, History Department chairman and teacher; E. Doner, artist; J. M. Larson, architect; Nyna Weisman, dancer; R. Evans, insurance executive; Paul Newman, actor; among others...

...You need us as much as we need your loan *If you share our values!!*

...The broader our financial support—the stronger our institution will become. We must be free and independent, financially and politically. We must *not* be answerable to a few large donors, wealthy alumni, powerful trustees, influential federal, state, or local governmental bureaucratic legislators—who can control funds and wield influence over the faculty and student body (as is true at most universities and colleges).

...A $25 LOAN GIVES YOU A VOICE AND VOTE IN CITIZENS COLLEGE.

...A $25 loan gives **you** a place in the only basic educational-political institution committed to Due Process Radical educational, social and political change. How many institutions or causes in American life provide you with a voice and vote where you can remove officers and leaders like at Citizens College?

If you want more information about Citizens college—write us:

Citizens College Organizing Committee, 90 South Main Street, Orange, New Jersey 07050, Tel. (201) 672-9100—and we will send you our Curriculum Outline and/or "Why Citizens College?"

$25 in check, money order, or in stamps from you will be acknowledged via a promissory note. We would like your support—your loan—to continue organizing the college and selecting students and faculty. **To repeat:** We believe you need us as much as we need your loan **if you share our values!** But in any event, be assured—we *will* open Sept. 13, 1972!

Signed: George Whaley, William Creed,
Gerald M. Schaflander, Griselda Brown, Co-Directors,
Citizens College Organizing Committee.

George Whaley: BS Morgan State College; Ph.D. Columbia University; Newark State College School Administration; Director, Night School of Medical Technology, Riverton-Bio-Analytical Lab and School of Medical Technology; Coordinator of State and Federal Funds and Community Liaison Officer, Jersey City Board of Education; Member, Executive Board of Jersey City N.A.A.C.P. and Executive Board of Jersey City Urban League; Author of *Blueprint for the Big Apple* (forthcoming); Age: 43.

William Creed: B.A., Amherst College; taught in Bedford-Stuyvesant ghetto school system, fourth grade, three years; Non-religious C.O. and occupational deferment from Army service; Formerly Director of Research Center for Social Change, Cambridge, Mass.; Currently, Research Assistant to Professor S. M. Lipset, Harvard University; Wife, pre-kindergarten, child care specialist; No children; Age: 27.

Gerald M. Schaflander: B.A., U. of Michigan; Equivalent of M.A. in Social Relations, Harvard University; Lecturer, Sociology, four years, at Northeastern U., Brooklyn College, and Boston University; 15 years in Advertising-Marketing; Campaigned for Senators Kefauver and McCarthy presidential drives; SANE, CORE, SCLC, and Reform Democrat educational, political and fund-raising campaigns; Co-author, *Ghetto Crisis*, Little, Brown, August 1969—with Prof. H. Etzkowitz; Author, *Passion, Pot & Politics* (to be published by Little, Brown, September 1971) with Prof. S. M. Lipset, Harvard U.; Currently lecturing on college campuses and writing; Wife, Registered Nurse; Three children (boy, 2 years old, two daughters, 27 and 23—teaching in elementary and high school); Age: 51.

Griselda Brown: B.A., Honors student in Sociology, Boston University (United Scholarship Service and Fund for Negro Students); Teaching Assistant, Jr. and Sr. years; Medical Case Worker, Boston City Hospital; Co-Director, integrated infant child care center, Roxbury, Mass.; Member, N.A.A.C.P. Legal Defense Fund; Age: 24.

Mitchell Melnikoff and William Perkins—Attorneys.
Winters, Broza and Block—Certified Public Accountants.
Jerome Morley Larson and Max Glantz—Architects.

This appeal is being made while we are in transition. We are forming the Research Center for Educational, Social, Political and Economic Change (same address) within which Citizens College will play a dominant role.

Send $25 in check, money order, stamps or cash to:

CITIZENS COLLEGE ORGANIZING COMMITTEE
90 South Main Street
Orange, New Jersey 07050
(201) 672-9100

NAME:_____

ADDRESS:_____

_____

PHONE:_____

Please send me:

- ☐ A Prospectus
- ☐ Why Citizens College
- ☐ Curriculum Outline
- ☐ High School Recruitment Piece

Application for

- ☐ Nursery
- ☐ Elementary
- ☐ Jr. High
- ☐ Sr. High
- ☐ College
- ☐ Job Application
- ☐ Mail Order Catalogue of General Store Merchandise

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TRB

from Washington ®

A Policy of Passivity

I closed my eyes and I swear I thought I heard Lyndon Johnson talking. It was Treasury Secretary John Connally, a Democrat and three times governor of Texas, announcing to a skeptical crowd of reporters at a White House briefing what is certainly President Nixon's most daring domestic gamble since he took office. Mr. Nixon is going to solve the economic slump by doing nothing. As simple as that. And – who am I to say? – it may work.

Connally talks like Lyndon Johnson and he looks like Lyndon Johnson. There is the same Texas twang, the same "to-morrer" and "foller" (for follow) and the same sly little appraising eyes and quizzical eyebrows. He has the same love for the oil depletion subsidy, and he wears the same million-dollar clothes. He isn't as rangy as Lyndon and he has a lot of thick gray hair, and a small, mobile mouth. He also has force and presence. He knew he had a tough assignment for this announcement and he came right out and carried it off in the face of a chorus of disbelief. Only the week before he was talking about the need for doing something positive about the economy, and when one of the reporters challenged him on this he had the grace to look sheepish which is certainly unlike Lyndon, who always had the capacity of believing for the moment (I think) whatever he was saying no matter how preposterous.

While this palace revolution was going on, we were gnawing our nails over the Pentagon Papers. Attorney General Mitchell brought the government suit, and was slugged down by the High Court, 6-3. Maybe he ought to get new lawyers; there is speculation that he draws his legal advice from Haynsworth and Carswell. In any case, he has an amazing record; it is unblemished... and so, back to Secretary Connally's announcement.

It means, in brief, one of the most dramatic tests in the history of economics in the next six months, and that the White House is replacing the views of Arthur Burns with those of Milton Friedman – two neighbors who happen to summer together in Vermont. It is full of ironies and drama (if you can understand it), and not a little poignancy. Also, if you are unemployed and the experiment doesn't work, there will be anguish and rage, and probably a presidential election at stake.

Mr. Nixon lost 1960 on economics. He was Vice President and his friend was Dr. Burns of Columbia, former head of Eisenhower's Council of Economic Advisers. Burns telephoned from New York that he had read the auguries and a recession was on the way and if Nixon wanted to be elected he must get Ike to cut taxes, start spending and be an activist. Ike wouldn't. The phrase was, "Arthur Burns while Ike fiddles." The recession came and Nixon lost.

And now, ironically enough, Burns is pleading again for the White House to stimulate the economy and Mr. Nixon isn't listening. Burns came to Washington, generally believed to be the top domestic adviser of Mr. Nixon, but he was appointed chairman of the Federal Reserve Board and doesn't see Mr. Nixon very often anymore.

Monetarist Milton Friedman has the new secret: recovery depends on the right quantity of money. It's just about the right quantity now. The Fed has liberated an explosive quantity of money (currency plus deposits) into the economy, at the rate of about 13.6 percent since January. There's normally a time lag of about six months to take effect, according to the theory. The stimulus is already taking effect. By Christmas the economy will be hopping. So do nothing – and wait. That suits Mr. Nixon fine.

It sounds a bit weird, doesn't it? But don't laugh it off. Milton Friedman is nobody's fool. He may be right, or the economy may recover anyway. You can watch the whole thing as a fascinating spectator sport if you are lucky enough to have a job.

Friedman operates as academic economist from the University of Chicago where he has practically founded the monetarist group. Supporting him vigorously in the Cabinet is OMB director George Shultz, and the administration mouthpiece for the nation is Connally who is given the new title, Chief Economic Spokesman.

Where this puts poor, colorless Council of Economic Advisers chairman McCracken, is anybody's guess. The Associated Press used to call him "President Nixon's chief economic adviser" but McCracken came out, June 17, saying that "expansion is not yet moving fast enough" to supply jobs, and recommending something further, and 12 days later Connally became Chief Spokesman.

Pat Moynihan, ex-White House leprechaun, who has returned to Harvard, has a high regard for diminutive Friedman. "If you were to ask me to name the most creative social-political thinker of our age I would not hesitate to say Milton Friedman," he said recently. Burns and Friedman are contrasts: Burns is cool, austere, with thick gray hair parted in the middle, and a slow, impressive speaking style, who constantly lights and relights his pipe.

Friedman is bouncy, lively, darting; a cricket of a man; he writes a column for *Newsweek* where he expounds the theology of monetarism (i.e. controlling the economy by changes in the quantity of money) in contradistinction to the rival creed of fellow columnist, Nobel Laureate Paul Samuelson who thinks that the quantity of money is important, but not *that* important.

Personally we think Mr. Nixon is taking a big chance but less so, probably, than appears on the surface. In 1960, Ike waited and hesitated and things got worse. But this year the barometer already shows signs of rising and (we think) is going to continue that way. Mr. Nixon could speed things up vastly if he would, but he is deeply and sincerely a disciple of laissez faire economics. When he intervenes he wants to give business a break. He vetoed bills for housing, public service jobs, and schools (the president of the National Education Association last week called it "the most anti-education administration this country has had in many years.") In contrast, he put into effect, by executive fiat, a $3 billion-a-year subsidy to big business in the so-called fast depreciation plan. (Ralph Nader has brought suit against it.) So what we are back to is the old trickle down system. The problem is that if it works it may well leave the gap between rich and poor bigger than ever.

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The Underworld Of Government

Somewhere in the US archives are 100 million pages of classified war records which date as far back as World War II. Somewhere in the Pentagon's machine-operated files are 20 million classified documents beyond the public's reach. Somewhere in the federal government are 38,000 employees of the Defense Department with original or "derivative" authority to classify a document "confidential," and in the same department 7000 employees with original authority to classify it "secret." A mere 300 bureaucrats can classify a "top secret" study, such as the 47-volume Pentagon Papers that have made their way into newsprint. The determinants for what the classifiers do – "security," "defense," "embarrassment" – are treacherous; this whole subterranean empire of buried information rests on President Eisenhower's Executive Order 10501, issued in 1953 and from time to time amended. An amendment of September 20, 1961 exempts from automatic downgrading or declassification over a period of years any document which, in the opinion of the head of any agency or his designee, has in it "extremely sensitive information or material." Of course no information is inherently sensitive; it is made so by the sensitivities of persons who claim it as their property; that is to say, the President and his appointees. In some instances, classifications shore up what reporter David Wise calls a system of "institutionalized lying."

A government operations subcommittee chaired by Rep. William Moorhead (D, Pa.) has tried in six days of recent hearings to ferret out what gets classified what and why. What has shocked the committee is not excessive over-classification, an abuse that has long been obvious, but the manipulation of information for personal or political aggrandizement. Presidents and department chiefs pass along confidential tidbits at their discretion. Not-for-attribution backgrounders withhold embarrassing information, but casually declassify so-called secrets. We end up with a network of anonymous leaks and cover-ups. Former officials use privileged information to sell their memoirs. It is a moot point whether LBJ in his forthcoming opus is more respectful of US espionage law than Daniel Ellsberg has been. *The Washington Post's* Benjamin Bradlee, who has seen the galley proofs of the Johnson memoir, says, "There's no question about it, there are several quotations from documents" contained in

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the Pentagon's Vietnam study.

It is ironic that the Nixon administration chose to enjoin the press (briefly, thanks to the courts) from publishing this secret study, for the press and the government have long picked each other's pockets. The press has had its inside "scoops"; the government, by calculated disclosures, has built support for its policies. Often favorable portions of a classified cable are leaked, but not the key qualifications. The administration will admit that bureaucrats tend to overclassify. Stray executive orders and interdepartmental committees try to make sense of old classifications guidelines, but in the end it always comes down to some official's political judgment, and that judgment errs on the side of caution and self-protection. To mark a document "administratively confidential" is to help it move it up the chain of command. Information is born classified, one witness told the Moorhead committee, unless someone can "prove" it should be otherwise. It took a special DOD directive to prevent employees from classifying information that had already appeared in the newspapers. And as to an adequate document-by-document review, DOD officials told the committee that they could not divert their energies from immediate matters of policy to muck about in six million cubic feet of files.

As a practical matter, no one can say how many top-secret files have been declassified and no one is charged with finding out. According to former under secretary of the Air Force, Townsend Hoopes, classified material that should be reviewed goes into warehouses; its originators forget about it or retire from government; it rests more securely than the Pharaohs of ancient Egypt. One Pentagon official, quoted in *The Wall Street Journal*, says that the Vietnam study "would have been filed away and no one would have looked at it for 20 to 25 years."

Two of the four categories of classified information *are* automatically downgraded after a certain number of years; the other two categories are not and don't require periodic review – and these categories contain most top-secret documents. There is no procedure for bringing before the bar any bureaucrat who improperly classifies or who surreptitiously withholds information. Accountability to the governed (or even the Congress) runs headlong into the desire to look good, and so the gulf widens between the actual sovereignty of the bureau and the presumed sovereignty of the people. Classified files have encouraged an elite to believe that intelligence should abdicate to Intelligence.

Moorhead's subcommittee has strained to come up with a way to get documents into the open, legally, rather than having them purloined and published. Some members were itching last week for a Constitutional confrontation that would hold in contempt those executive officers, even Secretary Laird, who refuse to release classified information which cannot be shown to imperil the national security. The subcommittee was demanding a look at the Vietnam study, with none of the strings that the President attached when he finally released the 47 volumes to the Congress. An interesting question arises. Does Congress have the power to declassify on its own motion? The power of inquiry and oversight are indisputable legislative functions, and the Constitution implicitly confers these powers on the Congress. But while the judiciary claims authority to examine top-secret files *in camera*, it may hesitate to adjudicate conflicting claims to information between the other branches of government.

Rep. Sam Gibbons (D, Fla.), former chairman of the Committee on Legislative Reorganization, has suggested that Congress override Executive Order 10501, make an inventory by volume of those documents that have been declassified, and annually publish a list of what remains classified. He would establish stringent and automatic procedures for declassification of all materials every three years and require someone at the Secretarial level to intervene to prevent declassification of a document. Senator Muskie is proposing an independent board of audit, much like the GAO, to oversee all classified material; it would have on it representatives of the White House, Congress and the press. No such regulatory board

"The front page is top secret. The back part is highly classified."

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can cut through 20 million secret documents, but it could put a damper on over-classification in the first instance. It could bar an official from stamping material which he himself generates. Perhaps it could distinguish between "action papers" containing policy decisions which should be made public, from "advisory papers" which for a time should be reserved for the presidential eye alone. Under the Freedom of Information Act, private citizens and newspapers can sue federal agencies to release unclassified information. A similar scheme might be applied to certain classified material, with the burden of proof placed on the government if the parties go into court.

All such proposals may founder on the rock of executive privilege, a doctrine touted by the Department of Justice as "implied in the structure" of the Constitution. So far the Department has failed to produce chapter and verse to support this bold license for secrecy – legally, it amounts to whatever Presidents have gotten away with since Thomas Jefferson classified the Lewis and Clark report on their expedition. The Constitution nowhere grants the executive power to withhold information. It is implied that as Commander-in-Chief the President can keep secret information bearing directly and unmistakenly on the security of our armed forces. But that is a very long way from refusing, as Mr. Nixon did, to release an unfavorable government report on the SST. The doctrine of executive privilege is largely an elaborate rationalization for a classification system based on nothing more than the executive order. President Nixon has invoked executive privilege once in two years. No agency head ever uses it as a legal justification (that would require the personal intervention of the President), but it is the atmosphere which they all breathe. When Secretary Laird refused three written and two oral requests by Senator Fulbright's committee to hand over the Vietnam study, he did not invoke executive privilege; he merely mentioned his duty to withhold information, as he saw fit. Executive privilege, though seldom invoked, nevertheless stretches effortlessly over a small subcontinent of federal files. One wonders, as the Moorhead subcommittee has, whether there is perhaps a doctrine of legislative privilege, and whether the Executive ought not to be held more strictly accountable on a daily basis, rather than only once every four years.

Granted, no government can conduct all its business in public, but the corollary of that is not: you may only know what we choose to have you know. The most dangerous political trend of the decade, Rep. John Conyers noted in committee, is the public's deepening doubt that the government's word means anything. The principle of government by the governed is made ridiculous if the governed aren't let in on what they have been consenting to. If we have to be in on the crash landing, and we do, we ought to be in on the takeoff.

Parochial School Aid

Parochial, like other elementary and secondary schools, have been in a financial crisis of late, with the consequence that some 36 states have taken various measures to aid them. By no means have all these measures been declared even presumptively unconstitutional. But an ominous cloud now does overhang them as a consequence of the June 28 decisions of the Supreme Court, rendered by Chief Justice Burger for eight-man majorities, with Justice Byron White alone taking a different view.

The Court's test, a recently developed one, of the validity of public aid to church-connected schools turns on the question of whether the form of the aid results in "an excessive government entanglement with religion." Rhode Island and Pennsylvania programs for supplementing the salaries of teachers of strictly secular subjects in parochial schools were held unconstitutional, because the Court found that they did entangle government with religion. The states would have to exercise surveillance to make sure that public monies were put to the strictly secular use intended by these programs, the Court held, and besides, all teaching in a parochial school, secular or not, necessarily tends to be part of the process of religious formation, which is the chief mission of such schools. So, the Court thought, the state gets entangled in trying to separate the inseparable, and having got entangled, it fails – a double fault. Federal grants for construction of secular facilities in church-connected universities, however, were held constitutional because each grant is a one-time, non-entangling involvement of government with secular aspects of a religious institution.

Justice White, characterizing the Court's reasoning, with not a little justification, as "a curious and mystifying blend," feared that the Court had created "an insoluble paradox for the state and the parochial school." That is probably an exaggeration, since the now reigning "entanglement" test is a porous one. It does not follow from these decisions that aid channeled to the pupil by way of scholarships rather than directly to the parochial school will be held unconstitutional. And construction grants are apparently all right. These and other variables are likely to come to judgment before long, since the parochial school problem will not go away. Twenty-five percent of Rhode Island's elementary school pupils are in private schools, 95 percent of which, in turn, are parochial. In Pennsylvania, the respective percentages are 20 and 98. These figures are high, but not unique in the industrial states. Pennsylvania and Rhode Island have spent a few million dollars annually – five in Pennsylvania – supporting parochial schools and helping them stay open. Should the parochial schools close, the flood of pupils would overwhelm the public schools. Hence, the states may be expected to keep trying.

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Paying for Diversity

It's an American tradition, as the Supreme Court noted in 1945, that "the widest possible dissemination of information from diverse and antagonistic sources is essential to the public welfare." Essential but expensive, and who will foot the bill? In the case of commercial TV and radio, the financier is the advertiser. Subscribers and advertisers share the tab for newspapers and magazines; the smaller the publication, the greater the share paid directly by its readers. In recent years costs of staffing, printing and distributing periodicals have risen faster than advertising or reader revenue. Once prosperous magazines have folded; others, large and small, are on the skids and may go under if second-class mailing rates rise, as is now projected, nearly 150 percent.

The postal raise is a result of Congress' stipulation last year that the new US postal service shall be self-supporting. This is a turnabout of longstanding policy that merits second thought. Unlike most other nations, the US has turned over certain channels of communication – airwaves and telephone lines – to profit-making corporations. To subject the public mails to that profit-and-loss equation is questionable, if the result is less variety in the printed word. The effect will be to concentrate opinion-forming power in the hands of fewer and fewer people.

In setting rates, should not Congress take into account the size of circulation, profitability, proportion of advertising to editorial content, percentage of contents devoted to public affairs, as well as percentage of postal expenditure to total publication expense? The social, cultural and political values in maintaining and encouraging serious, even shoestring, publications should need no demonstration.

Congress can remedy the situation by reconsidering pay-as-you-go postal service. To subsidize the mail is not to favor one political view or one special interest over another. It is to underwrite a diversity that invigorates democracy.

Britain in Europe

Undecided Harold Wilson

London

The Common Market card has been for so long the joker in British politics that now that it lies face upwards on the table it has temporarily paralyzed the whole game. The successful outcome of the negotiations at Luxembourg last month has meant for politicians of all parties that a choice can no longer be avoided. Of course there is no problem for Britain's Prime Minister Mr. Heath. Ever since he came to Parliament more than 20 years ago he has been a dedicated European. At long last the door to Europe is wide open, and provided he can keep control of his party Britain will be a full member of the European Economic Community by January 1, 1973. With anti-European feeling crumbling among the ranks of his own MPs, Heath should be able to pull it off.

But the reason will have just as much to do with disarray in the Labour party as it will with any new-found unity among the Conservatives. If Harold Wilson thought that the Common Market was going to be his ace of trumps he has been very quickly disabused. Far from his being able to ride back to power on the European issue, it begins to look as if it could end up by driving him into retirement.

In its own way the story represents a cautionary tale for all temporizing politicians. From the start of the present negotiations a year ago (a renewal of the effort that he himself had launched when he was Prime Minister), Mr. Wilson consistently said that he would not pronounce any verdict on the question of British entry until he had seen the terms on which it had been secured. By the often mesmerized professional observers of the political scene his canniness and skill were widely acclaimed. Mr. Wilson, the British public learned, was keeping his options open. Despite his earlier support for the European venture, he had, or so it was said, cleverly ensured that when the bargain was finally struck he would be able to pounce on any item in it that he regarded as in any way unsatisfactory.

Alas, the most skilfully conceived plots can sometimes go wrong. When the government disclosed the package agreement it had managed to negotiate last month there was virtually nothing in it Mr. Wilson could object to. The New Zealanders professed themselves satisfied, so did the sugar producers of the Caribbean, so even (in the unkindest cut) did Mr. Wilson's own former Common Market negotiator in the Labour government. Far from resembling a piranha fish, Mr. Wilson began to look like a stranded whale.

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It is in many ways his own fault. Ever since he was driven into opposition last year Mr. Wilson has chosen to play at being a Mona Lisa on the European issue. The smile has been enticingly enigmatic from whichever angle you looked at it, but it has given absolutely nothing away about his future intentions. The result was perhaps inevitable. From having a party behind him that a year ago was at least nominally united in favor of British entry into Europe, Mr. Wilson now has to deal with a party that is split down the middle. In Parliament the 287 Labour MPs are about evenly divided. In the constituencies no one seems to want to go in; while among the party's paymasters, the labor union leaders, supporters of British entry are outnumbered by opponents by about two-to-one.

But that is only the beginning of Mr. Wilson's troubles. It is bad enough that the party is so seriously split; it is in many ways far worse that it should insist on demonstrating its divisions to the nation. Incredibly in two weeks' time and in full view of the nation's television watchers, the Labour party is to hold a special conference in order to thrash out its differences on the Market issue. At the end of the day, one might have thought that Mr. Wilson could not avoid making his own position clear. But that is a challenge from which he still apparently shrinks. The latest word is that while he will make the winding up speech at the conference, he will still in no way commit himself to a pro, or an anti position.

It is not just Mr. Wilson's evasive posture that is beginning to attract cynical comment, but his tactical sense. For the plain fact is that unless Mr. Wilson soon declares himself – or as his critics put it, comes off the fence – the government is bound to have things all its own way on Europe.

Even the complicated arrangements by which time is allowed to party leaders on TV in Britain require that if the opposition leader is to be given a right of reply to the Prime Minister there must be a clear-cut conflict of opinion between them. At the moment no one could claim that that condition exists. On Europe Mr. Heath stands for something and Mr. Wilson for nothing.

It is not just the Labour party that is suffering from Mr. Wilson's paralysis. British democracy is, too. The vast majority of the British people, if polls are anything to go by, like the idea of entering Europe no more today than they did a year ago. But under the political system there is no way for them to voice their fears and doubts. Why then with growing pressure upon him to demand an election on the Market issue does Mr. Wilson hold back? The only plausible explanation is probably also the correct one – that personally Mr. Wilson still believes in British entry into Europe but knows that politically he cannot say it. His dilemma could hardly be more poignant. Intellectually convinced that there can be no future for Britain outside Europe, Mr. Wilson is also personally persuaded that there can be no future for any leader of the Labour party who rides roughshod over the views of his members. So rather too transparently he simply stands on the sideline of what was supposed to be a great debate, waiting for something to turn up. The only thing that now looks like turning up is a far more effortless passage for Mr. Heath's European policy than anyone could have conceived possible a few weeks ago.

Anthony Howard

The Nixon Watch

Showdown with Reagan

At the Department of Health, Education, and Welfare, one of the two federal agencies where Mr. Nixon's problems with Governor Ronald Reagan of California are centered, the impression is that there isn't any problem any more. Reagan's arrogant demands for the waiver of federal welfare standards and the President's disagraceful show of surrender to those demands appear to have died with the demise of the governor's state welfare proposals in his own legislature in Sacramento. Two strong administrators, Secretary Elliot Richardson and Under Secretary John Veneman, a sometime California legislator who is blessed with an acute appreciation of Reagan's capacity for bluffing, seem to have waited him out and to have demonstrated to their masters at the White House that the governor has lost so much standing and credence in California that he is in no position to be the threat to Mr. Nixon's renomination and reelection next year that he was assumed to be back in March and April. The remaining welfare issues, having mostly to do with token payments for federally subsidized medical care for the poor and with a diminished requirement that employable welfare beneficiaries work at available jobs, are in line with the President's national welfare proposals and will not, when and if they are finally approved, call for any serious abandonment of federal decency.

At the other agency, the Office of Economic Opportunity, the situation and the indications of White House attitudes toward Reagan to be drawn from it are very different. An OEO decision last week, bearing importantly upon the future of federally provided legal assistance for the poor in California and the nation, appears on its face to indicate that the President is still as afraid of Governor Reagan's potential for trouble in 1972 as Mr. Nixon seemed to be last spring and that he is still prepared to go to any conceivable lengths to pay off Reagan with whatever Reagan wants. It *appears* – the word must be emphasized, for reasons to

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be explained shortly – to indicate that the President and his advisers share the opinion of a good many politicians, among them some of Reagan's Democratic detractors, that his prospective leadership of the California delegation at the Republican convention next year and his continuing national appeal to conservative voters could, if events generally are not going well for Mr. Nixon, outweigh the governor's decline in California itself and make him a substantial and hostile factor both at the convention and in the election campaign. Therefore, according to this reasoning, the President must as a matter of sheer precaution take care whenever possible to placate Reagan and to take special care in matters that concern the governor.

One of those matters, perhaps the one that concerns Reagan more than any other, is OEO's Legal Services program. The biggest of 37 OEO legal programs in California is California Rural Legal Assistance, Inc. Its 44 lawyers, directed from CRLA headquarters in San Francisco, serve the poor in nine California counties. CRLA has angered Reagan with a series of successful "class actions" in state and federal courts that have forced his administration to end or at least mitigate abuses in fields ranging from medical care to the provision of food stamps and fair treatment of Mexican-American children in public schools. OEO Director Frank Carlucci, a borrowed Foreign Service Officer who means well but clearly should return to foreign diplomacy, upheld Reagan's veto last January of a grant of $1.8 million to CRLA for 1971 and, in an outrageous evasion dictated for the President by John D. Ehrlichman, the White House assistant for domestic affairs, substituted a conditional six-month grant that expires July 31. Reagan professed to be "very pleased and gratified," as he should have been by the accompanying and gratuitous reflections upon a program that had been praised by five successive teams of federal evaluators. Reagan based his veto upon 135 charges against CRLA, manufactured for him by his State Office of Economic Opportunity, a federally funded front whose director, Lewis K.Uhler, has just been accused in a civil suit of misusing $100,000 of federal money. Carlucci dignified the Reagan-Uhler charges by, among other things, referring them to the Justice Department and the Civil Service Commission for "possible violations of federal law or federal prohibitions on political activity" by CRLA lawyers. Carlucci never announced that Justice and the commission found no evidence to support the charges.

Carlucci also appointed "a high-level commission" to conduct "a full and impartial review of the matter" and to guide him in deciding whether to fund CRLA after July 31. That commission, headed by retired Chief Justice Robert B. Williamson of Maine, conducted hearings in California and submitted its findings to Carlucci on June 25. At Reagan's order, Uhler and his State OEO refused to participate in the hearings beyond submitting the Uhler charges and (in the commission's words) "some 3000 pages of exhibits purporting to document the factual allegations." The commission summarized its 400-page report as follows: "Based upon the record before it, consisting of the voluminous testimony of 165 witnesses at 20 days of public hearings . . . the Commission finds and concludes . . . that CRLA has been discharging its duty to provide legal assistance to the poor . . . in a highly competent, efficient and exemplary manner. We, therefore, recommend that California Rural Legal Assistance, Inc., be continued and refunded." The commission noted "occasional instances of lapses in administrative supervision and control of sometimes young and inexperienced attorneys" and "isolated instances of a lack of judgment" that had contributed to "misunderstanding" and criticism of CRLA. But it said that these instances "are not of any great magnitude" and that the major Reagan-Uhler charges "were totally irresponsible and without foundation."

Carlucci, announcing his decision to refund CRLA on June 30, did not quote a single line of the commission's positive findings. The most that he brought himself to attribute to the commission was, in his paraphrase, a finding that "on the whole CRLA has provided a useful service to the rural poor" of California. Although the commission had disavowed any concern with the general issues involved in legal assistance, he said the commission report "forced" him "to the conclusion that many significant issues of public policy have been raised by Governor Reagan." Carlucci concluded his announcement with a confession that: "This decision . . . has been discussed with Governor Reagan, who has advised me of his concurrence."

The essence of Carlucci's decision had been determined long before he received the commission report. It was checked at every stage with John Ehrlichman at the White House but not, I was told there and am inclined to believe, dictated to the extent that the January decision was. It didn't have to be. The main lines of Nixon policy on legal aid for the poor, in California and elsewhere, were determined in April and set forth in a presidential message to Congress on May 5, proposing that the entire federal legal aid program be transferred from OEO to a theoretically independent and federally funded Legal Services Corporation. It can be argued that this would be a more effective instrument than OEO's directly administered system has proven to be. The President's primary purpose, connected with but by no means confined to his Reagan problem, is defined with utter frankness at the White House. The purpose is to get off the President's back the political problems that are bound to arise from any publicly financed legal aid program for which his administration is directly responsible. Carlucci was required to serve that purpose with his California decision, and it can be understood only in this light.

CRLA had applied for a grant of $2.65 million that

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would see it through the 17 months from July 31 to the end of 1972. Carlucci promised in his statement to approve a 17-month grant, "subject to 22 special conditions" and to yet another reevaluation of CRLA performance before the money for 1972 is released. His statement said that OEO, Reagan's state government and the California Bar Association would do the reevaluating. He also promised to approve a special grant of $2.5 million to finance an experimental study and then a 12-month trial of federally financed legal assistance to be provided by private attorneys and local bar associations. It was all very curious, very obscure and highly conditional. But, in the declared opinion of CRLA Director Cruz Reynoso and of several dedicated friends of genuine legal aid for the poor, the decision was not necessarily the equivocal cheat that it could be interpreted to be. Carlucci has promised that the next evaluators will include responsible representatives of the American Bar Association, among others, and will not be dominated by Reagan foes of CRLA. He has also indicated to Reynoso and other CRLA advocates that the imposed "conditions" will amount to no more than restrictions that CRLA already observes. That is not Ronald Reagan's understanding. He said he was "delighted," and he still has the power to veto the actual grant. It could be, and I hope it is, Governor Reagan who has been cheated.

John Osborne

The Great Case That Made Great Law

The Right to Publish

by Nathan Lewin

A favorite aphorism among lawyers – particularly cited by those who find themselves advocating an inequitable or unpopular position supportable only by the letter or logic of the law – is that "hard cases make bad law." Justice Oliver Wendell Holmes, in a 1903 dissent to an early – and now classic – Supreme Court decision giving broad application to the provisions of the Sherman Antitrust Act, observed that the same could be said of "great cases" because "immediate overwhelming interest which appeals to the feeling and distorts the judgment" creates "a kind of hydraulic pressure" on otherwise "well settled principles of law." Both Justices Harlan and Blackmun, obviously believing that "bad law" had been made by the celebrated *Times* and *Post* cases, last week introduced their separate dissents from the Supreme Court's Pentagon Papers decision with a full quotation of Holmes. But to many others, the Court had risen to the occasion and, disproving Holmes, demonstrated that a great case is a suitable occasion for announcing great law.

The *New York Times* and *Washington Post* cases were "great" in the sense of raising, at their inception, extraordinarily important issues of constitutional law and engaging an enormous amount of public concern and interest. And they were treated as "great" on their arrival in the Supreme Court, where they had a plainly unsettling effect. The Court's usual imperturbability was shattered with a special precedent-setting Saturday hearing (granted on one day's notice), the submission of secret briefs (to explain the danger to the national security of disclosures of some of the documents), the sudden and unexpected extension of the 1970 Term of Court (which had been scheduled to end on Monday, June 28), the announcement of the result in an open Court session on a Wednesday afternoon (the Court ordinarily meets at 10 in the morning and, at the end of the Term, issues decisions only on Mondays), and, finally, the publication of ten opinions – a brief summary of the Court's ruling and separate statements of view by each Justice.

The multiplicity of opinions unfortunately makes it appear as if the decision were less clear-cut than it was. Even one of the litigants – *The Washington Post* – in its editorial comment the morning following the decision, pointed to "many conflicting conclusions stated by all nine justices" and expressed regret that the Court had failed to "come to terms with the tormenting issue at the heart of this dispute – the government's right of prior restraint of the press." In fact, notwithstanding the volume of paper and the Court's apparently deliberate policy of having each member express his personal position, the Justices' opinions show a greater degree of cohesion and agreement than might appear at first blush.

The broadest question presented for the Court's decision was whether the Executive Branch of government had any constitutional power to obtain a court

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injunction preventing the press from publishing documents whose disclosure would present "grave and immediate" dangers to national security. The Court could have avoided that cataclysmic issue by examining the most sensitive of the documents and concluding, as did the trial courts in both cases, that the claim of danger was ephemeral. It was invited to decide the cases on precisely that basis by all the parties. Toward the beginning of his oral argument, Solicitor General Griswold acquiesced in a characterization from the bench that "this basically came down to a fact case," and he tried to focus the Court's attention on ten "items" (one "item," it later developed, designated four of the 47 volumes) which the government viewed as presenting the greatest danger to national security. Counsel for the newspapers also relied heavily (as any careful attorney would) on the factual findings of the trial courts and on the government's failure to establish that any "extremely grave" consequence to the nation was likely to be the "direct and immediate result" of the publication of the papers.

It is to the Court's great credit that it did not choose to escape by an easy and available route. All the six Justices in the majority addressed themselves squarely to the central constitutional question, and all six answered it adversely to the government, albeit on two somewhat different grounds. Justices Black, Douglas and Brennan, in their three opinions, expressed the view that any "prior restraint" on publication is constitutionally prohibited by the First Amendment – that is, that the government may not, in advance of publication, prevent the press from reporting or publishing.

The most impassioned of the three opinions was Justice Black's, and it reflected his strong "absolutist" view of the First Amendment. He accused the Executive Branch of having "forgotten the essential purpose and history of the First Amendment" and he said of the government's argument on the meaning of the First Amendment, "I can imagine no greater perversion of history." Reducing abstract constitutional theory to specifics, Justice Black commended the *Times* and *Post* for carrying out the duty of a free press "to prevent any part of the government from deceiving the people and sending them off to distant lands to die of foreign fevers and foreign shot and shell."

While agreeing substantially with Black, Justice Douglas wrote separately about the criminal provisions of the federal Espionage Act, which, in the section initially relied on by the government in the *Times* case, does not expressly cover (as do other sections) the act of publication by a newspaper. And in an incidental reference to the "inherent power" to wage war asserted by the government, Douglas noted that the Constitution vests the authority to declare war in Congress and that "nowhere are presidential wars authorized."

Justice Brennan's separate opinion was aimed principally at the temporary injunctions against publication which had resulted in approximately two weeks' delay while the issues were being tried and decided by the three levels of courts. He said, in unequivocal terms, that "every restraint issued in this case, whatever its form, has violated the First Amendment – and none the less so because that restraint was justified as necessary to afford the court an opportunity to examine the claim more thoroughly."

The other three Justices in the majority – Stewart, White and Marshall – rested their invalidation of the "prior restraint" on somewhat different grounds. It had been conceded that there was no specific federal law authorizing the Attorney General to bring lawsuits of the kind instituted against the *Times* and the *Post*, but the government claimed that these legal actions were justified to carry out the President's "inherent powers" in the areas of national defense and international relations. Stewart, White and Marshall essentially rejected this claim, without committing themselves on the question whether a prior restraint – which they recognized as bearing a "heavy presumption of unconstitutionality" – could be legally invoked under a hypothetical Act of Congress, "appropriately limited," expressly authorizing such lawsuits. They cited attempts made in 1917, when the Espionage Act was under consideration in Congress, and thereafter in 1950 and 1957, to grant the President statutory power to prevent publication and demand surrender of sensitive documents. Each of these attempts was defeated. Accordingly, as Justice Marshall put it, "it is plain that Congress has specifically refused to grant the authority the Government seeks from this Court."

The Stewart-White-Marshall reasoning (expressed, with slight variations, in three opinions) appears paradoxical when laid side-by-side with the language of the First Amendment. Since the Amendment directs that "*Congress* shall make no law . . . abridging the freedom of speech, or of the press. . . ." it sounds strange to say that what amounts to an abridgment of free press in the absence of an Act of Congress is made less so by the enactment of a statute. But the word "Congress" has long since lost its literal meaning, and has been read by the courts to prevent any agency of federal, state or local government from inhibiting free speech or press. And there are judicial decisions which establish the principle that carefully limited legislative judgments restraining speech in particular circumstances may be constitutionally applied to situations where no governmental restraint would be permitted in the absence of a statute.

So what the six votes mean – plainly and unconditionally – is that unless Congress enacts a law giving the Attorney General authority to prevent reports or publication of sensitive government documents, newspapers cannot constitutionally be enjoined from pub-

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lishing them. By any token, it is a resounding constitutional triumph for the press and a defeat for the increasingly suppressive positions taken by the Department of Justice in the Nixon Administration.

There is, to be sure, a fly in the ointment. Justice White's opinion, while concluding that the government "mistakenly chose to proceed by injunction," notes that he would have "no difficulty in sustaining" criminal convictions under various provisions of the Espionage Act which may have been violated by the *Times* and *Post*, as well as by Daniel Ellsberg, who has publicly admitted disclosing the Vietnam study. Justice Stewart joined White's opinion, and Justice Marshall explicitly reserved judgment, observing that while District Judge Gurfein had held that newspaper publication was not covered by the relevant section of the Espionage Act, Justice White had offered a contrary "plausible construction." Two of the three dissenters – Chief Justice Burger and Justice Blackmun – noted that they agreed with White's reading of the criminal statutes, and while Justice Harlan did not expressly indicate his assent, the plain implication from the rest of his opinion is that he would also sustain a criminal conviction.

That dichotomy points up the anomaly of the constitutional principle prohibiting "prior restraint" but not after-the-fact sanctions. It means that while the *Times* and *Post* may publish, they do so at their peril, and that someone less brave-of-heart or less able to afford the cost of legal representation and a possible criminal fine (or term of imprisonment) may not assume the risk. Professor Paul Freund of Harvard – one of the country's leading constitutional law experts – has expressed his misgivings over the line's being drawn where it is, most recently in the pages of the *Times* in commenting on the Pentagon Papers cases. Viewed, however, from the vantage point of the public and its right to receive what is being published, it is probably a beneficial principle because it maximizes the chances of publication. Since a criminal trial requires a jury, proof beyond a reasonable doubt and other constitutional and legal safeguards (while disobedience to a court injunction may be punished by a short term of imprisonment or fine without a jury and without looking to the validity of the injunction), a publisher unwilling to risk contempt may be ready to gamble that he will not be prosecuted – or will be acquitted by a jury in case of a prosecution.

At a criminal trial under the provisions of the Espionage Act the prosecution would, of course, have to prove that the documents published "could be used to the injury of the United States," and the government will have this burden in its case against Ellsberg. Interestingly enough, the most that any of the Justices could say about the Vietnam Study documents – which were made available to them for examination – was Justice White's statement that he was "confident" that disclosure of "the most sensitive and destructive" of the documents "will do substantial damage to public interests" (however "public interests" may be defined). Even Justice Blackmun, in dissent, could do no more than say that he "feared" that the finding of a Court of Appeals judge that publication "could clearly result in great harm to the nation" was among "statements hav[ing] *possible* foundation."

The three dissenters (Burger, Harlan and Blackmun) appeared more troubled over the speed with which the Court had acted than with its substantive ruling. Harlan, whose opinion was joined by the other two, called the Court "irresponsibly feverish" in its disposition of the cases, and both Burger and Blackmun, in their opinions, described the pace as "frenetic." The only discussion of the merits appeared briefly in Harlan's opinion, where, while recognizing the judiciary's obligation to review an Executive Branch determination of sensitivity (which must be made, he said, at the Cabinet-level), he observed that judicial review of classifications must be "exceedingly narrow" with great deference given to the Executive Branch.

What lessons will be learned from the Supreme Court's action? For Mr. Mitchell and the Department of Justice, it amounts to a second rebuke by the Court and is reminiscent of the Court's disposition of the Mississippi school-desegregation cases in the first year of the Burger Court. There too, the sudden assertion of constitutionally unsound doctrine by the Justice Department with the assistance of then Secretary of HEW Finch – who decided, at the last minute (at the insistence of Senator Stennis) to give Mississippi schools another year to desegregate – precipitated a resoundingly progressive decision by the Court, calling for immediate desegregation, which would not, in the ordinary course, have come for another Term or two. Now, with the incident of the Pentagon Papers, the Justice Department has blundered its way into an authoritative ruling which vindicates the right to publish without any prior interference from government.

As for the *Times*, it has made constitutional history a second time. In 1964, the Court decided in a libel action brought against the *Times* that the free press guarantee of the First Amendment shielded newspapers against defamation suits brought by public officials who could not prove malice on the part of the papers. That *New York Times* case has been expanded by later decisions to cover invasion-of-privacy actions and lawsuits brought by private newsworthy parties. What must be called by constitutional lawyers *New York Times I* was the precedential decision immunizing the press from certain suits *after* publication. *New York Times II* now has broken ground on the subject of restraints *before* publication. There is a certain symmetry in the combination, but the *Times* had better beware lest the Attorney General view its participation as a monopolization of the market in constitutional law.

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Games Presidents and Other People Play

Pentagon Papers

by Eugene J. McCarthy

The overall effect of the publication of the Pentagon Papers is as yet somewhat unclear. There is no question, however, but that their publication has damaged the reputation of some officeholders – past and present – and that it has added to the growing distrust on the part of the Congress and of the people of the country in the official statements of policy and program by the executive branch of the government.

The papers published have not revealed very much that was altogether new or different. Nevertheless, what they have shown is highly significant.

They have shown first that the executive branch, acting and speaking principally through the presidency and the State Department and the Pentagon, has been more devious and more deceptive than was suspected. And it was suspected very greatly – especially by members of the Foreign Relations Committee of the Senate, which has been at least since 1965 asserting without much success the right of the Congress and of the country to accurate information as to our policies in Vietnam and as to the realities of the war.

The difference is quantitative rather than qualitative, relative rather than absolute, but it is a significant difference. The papers show, for example, that the misrepresentations surrounding the preparation and the presentation to the Congress in 1964 of the Tonkin Gulf Resolution were more carefully programmed and directed, more calculated even than was revealed by the Senate inquiry on that incident in 1968. It seems quite clear now that there was a connection between the United States destroyers patroling in the Tonkin Gulf and action in South Vietnam, although this connection was denied by Secretary McNamara in an appearance before the Senate Committee. And also that the captains of the United States destroyers knew that the South Vietnamese were conducting naval raids, although this was not admitted at the time of the inquiry.

The papers show that the administration was much more ready to mislead the people of the country by withholding information, by telling only half-truths and, in some cases, by positive misrepresentation. And that this was the case not just between elections – when considerations of strategy might justify a measure of secrecy – but true in the election years of 1964 and 1968, the time when the people had every right to a full knowledge of not just what the government was doing in Vietnam but what it believed it might have to do, what it planned to do even on a contingency basis.

When President Johnson in August of 1964 said he was not going to load our planes with bombs, or enlarge the war, or send American boys to fight in Asia, he should have said that he *hoped* he would not have to do any of these things and added, as was the case, that there were contingency plans under consideration which, if certain conditions developed in the war in Vietnam, might have to be brought into effect, and that these plans included bombing and also the use of American troops.

And again in July of 1965, when the President was asked whether sending troops to Vietnam implied a change in existing policy, he said it did not, when it clearly did imply a change in what, at least at that time, was a declared public policy of the United States government.

The papers expose even more callous misrepresentations and manipulation in showing, for example, that within the administration the bombing halts were generally not taken as actions toward ending the war, but rather as calculated to give grounds for arguing that the enemy had not responded to peaceful overtures and that consequently the critics of the war would be put in a more difficult position, if not silenced, and that a propaganda basis for an escalation of the war would be established.

The papers show that the measure of self-confidence and of arrogance on the part of men like Walt Rostow, Robert McNamara, and McGeorge Bundy was greater than it was generally believed to be. Here is a quotation from McGeorge Bundy on the question of the overthrow of Diem taken from a note sent to Ambassador Lodge: "Once a coup under responsible leadership has begun, and within these restrictions, it is in the interest of the US Government that it should succeed."

Or an earlier one from William P. Bundy in 1961, saying that there was a 70 percent chance that present and aggressive US action could clean up the situation

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in Vietnam but that there was only a 30 percent chance that we would "wind up like the French in 1964," according to the report in the *Chicago Sun Times*. How William Bundy figured out the 70-30 percent chances, or what significance these percentages had was never explained.

The arrogance and self-confidence of Robert McNamara was not as much indicated in particular statements as in his acceptance of his image and reputation as concise and hard-thinking and competent, almost to the point of representing him as a man who could make no mistakes.

The papers show a greater dependency on the part of Presidents on military advice and military counsel and a much stronger tendency to accept military proposals for the solution of nearly every international problem than should have been the case. They also lead one to the rather separate conclusion that the idea of having a White House General like Maxwell Taylor was a bad idea, not just in the personal choice of Taylor but as a general practice, for as a practice it has a potential of doing two things: one of putting too strong a military influence in the White House, and secondly of weakening and confusing the role of the chairman and the members of the Joint Chiefs of Staff.

The papers and the reaction to them on the part of the Nixon administration show that three successive administrations – President Kennedy's, Johnson's and Nixon's – have even less respect for the constitutionally prescribed procedures for the sharing of power and responsibility over military and foreign policy than was indicated in the publicly expressed testimony of Nicholas Katzenbach when he spoke for the Johnson administration, and more recently by Secretary of State Rogers speaking for the Nixon administration.

They show greater willingness to pervert and abuse the language in private memos and reports than had been shown in public statements and documents. To the publicly used words like *kill ratios*, we can now add the private word *attrit*, an inside-the-Pentagon word for killing Vietcong and North Vietnamese; and along with the publicly used word *escalation*, the word *ratchet* as describing the process by which the war could be intensified.

The papers show also a strong and almost frightening callousness and detachment on the part of those who were managing the war, manifest in the use of terms such as these: when it had gone badly, for example, the situation was described in one memo as our having been brought to *square one* – a figure of speech, I assume, drawn from parlor games in which a bad spin might bring you into a square which required you to move your pawn back to square one and then to start over; manifest also in the recurrence of the phrase *on balance* as though without it being defined, it described a kind of minimal justification for whatever happened, since the matters being weighed were always of a different order and that the person reading the scales could conclude that "on balance" the policy had worked out satisfactorily.

The same attitude is manifest in the tendency to quantify what had to be personal, subjective, military, political or moral judgments. The most striking example of this was in the much quoted report of Assistant Secretary of Defense John McNaughton which, according to the Pentagon Papers, met with the approval of Secretary McNamara. McNaughton defined and measured US aims in Vietnam as follows: 70 percent to avoid United States defeat; 20 percent to keep South Vietnam territory from Chinese hands; 10 percent to permit the people of South Vietnam to enjoy a better life.

This use of percentages is essentially the same as that which is used today in making weather forecasts – a technique which I have always thought to be if not dishonest at least misleading: a 20 percent chance does not tell you very much about when the rain will come, if it is to come, or how much rain will fall, whether to expect a light shower or a cloud burst or a flood. Certainly the forecasters in Vietnam gave no indication of what was to follow.

There emerges from the papers indications of a new and disturbing concept of the role of a public official, both elected and appointed. The thesis, in the case of the appointed official, is that since he is appointed by the President he becomes pure and simple the agent, the mouthpiece, the representative of the presidential position in his public role.

This thesis was expanded most thoroughly by George Ball in his appearance on "Face The Nation" on June 27, 1971. The Ball case is particularly interesting since the word around Washington was that within the White House he was the principal opponent of our policy in Vietnam and that he was not, as some said, simply a "devil's advocate." (A misapplication even of that term, for the "devil's advocate" by tradition is one who said bad things about good people or good causes rather than critical things about bad causes.) In any case, Ball let the reputation stand that he was sincerely and personally against the war.

In the CBS interview, George Ball was asked to explain why if he believed, as some of the memos indicated, that the Vietnam war was an indigenous civil war, he had in a public speech in 1966 said that the idea that it was a civil war was a myth that Hanoi was trying to put over on us, that it was not a civil war but an outside attack by an outside power. Mr. Ball replied: "I was doing exactly what any government official must necessarily do if there is to be an orderly government and not a pure anarchy. When I was speaking to Northwestern University or whenever I made any public statement, I didn't make it as George Ball; I made it as the Under Secretary of State of the United States, and I expressed the view which was the view of the administration as determined by the Presi-

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dent. Now the fact that I might disagree with that view in the inner circles and try to persuade the President to adopt another point of view, that's a wholly different matter. I don't see any inconsistency, quite frankly."

By way of justifying this apparent contradiction, George Ball argued that he had no constituency, and implied somehow that if he had had a constituency he might have acted differently. As a matter of fact, an appointed official has a constituency if his nomination is approved by the Senate. Certainly at the time of Ball's statement of 1966, there was evidence of a strong constituency opposed to the war in the United States Senate. And, moreover, when an issue is of overriding moral significance and also one which involves the good of the nation as deeply as the war in Vietnam did, an officeholder's constituency is reduced to his own sense of personal responsibility.

George Ball suggested in the same interview another justification for not having said publicly what he believed privately, which was this: "Now the fact is that Vietnam was for me only one of many, many things with which I was concerned; in fact, I spent a very small part of my time, particularly during these earlier periods, on Vietnam. I was concerned with the world. . . ."

An attitude very similar to that expressed by George Ball was also accepted by elected officials who had formal and constitutional constituencies. Vice President Humphrey, for example, seems to have accepted that his constituency was not the Democratic party or those who had voted for him or Hubert Humphrey, but rather that he had a constituency of one to whom he had to respond; namely, President Johnson.

And Senator Muskie now says he was opposed to the war in 1968, but, for reasons not given, supported the Johnson policy.

It begins to appear that as more and more memoranda and letters are leaked, published, remembered, and reported by staff members or former staff members that the next Democratic convention will not have to draft a platform at all but simply let the convention vote on what set of secret or private memoranda, letters, diaries of prospective candidates they wish to accept.

Of greater seriousness and implication than these differences and degree in quantitative variations, or even more disturbing indications of questionable concepts of personal responsibility in public office and of loyalty to Presidents or to Party as more important than individual judgment and conscience, is what the papers reveal with reference to efforts to end the war by negotiations either before or after Paris, at Paris, or outside of Paris. The difference between what was publicly stated and indicated – namely, a sincere desire to negotiate an end to the war and a serious commitment to accomplish an end by negotiation – and what the published papers indicate was an inside-administration view of negotiations was a difference not just of degree or of quantity but one of substantive difference and, therefore, one involving much more serious misrepresentation. It is difficult to find in a most careful reading of the papers any indication that our offers to negotiate or our sending negotiators were ever meant to be anything much more than devices by which criticism of the war might be blunted and justification for further escalation of the war established. There is no indication that the recommendations for negotiating that occasionally crop up in the Pentagon Papers were given more than passing attention.

Negotiations were certainly possible and should have been entered into at the time of the fall of Diem or before that fall.

Negotiations should have been tried before the beginning of the bombing in 1965.

The offices of the United Nations or other means should have been and could have been used in 1966 during the time that our troop strength was being increased to over a half million men.

The overtures reportedly made through Harold Wilson in 1967 should have been tested.

Negotiations to settle the war should have been sought immediately after the TET offensive when both Secretary Rusk and President Johnson, according to later reports, thought we were on the edge of victory.

Instead of negotiations, we entered into an agreement to set up a more or less permanent negotiating office in Paris, and send negotiators practically without portfolio, without any apparent direction excepting to go to meetings and to be prepared to dismiss proposals from the other side as propaganda.

The time for negotiation is still now as it has been for five years.

The first step toward negotiating an end to the war is a commitment on the part of the President and of our government to make concessions in order to end the war. As a basis for negotiation, we should accept, the fact that there has not been any major shift in the basically unfavorable political and military situation in Vietnam and that such a shift under present or forseeable conditions is not likely to take place.

Second, that the publicly proposed free elections are not realistic under present conditions and a proposal for free elections from us will not be accepted as one made wholly in good faith. In 1956, we supported the Diem Government in its refusal to hold the elections called for in the Geneva Accords. As former Ambassador Harriman has stated, it has never been envisaged that a political settlement could be brought about by a "winner take all" election in the Western tradition. The war has not been fought for free elections. I am not aware of any case in history where divisions and grievances strong enough to have led to 25 years of civil war were settled immediately by elections – free or unfree.

Third, we should acknowledge that Vietnamization

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has not worked, is not working, and is not likely to work. Vietnamization has been tried repeatedly over the past 20 years: first by the French and later by us. It was, after all, the inability of the South Vietnamese army to fight effectively even after more than 10 years of training and equipment by the United States that prompted the dispatch of American combat troops in 1965. Even if through a resurgence of morale and reduction of corruption, the South Vietnamese army could be made into an effective military force, there would still be the question of whether Vietnamization is desirable. Asians would be killing Asians with American arms. Defoliation and destruction of crops would go on, villages be destroyed, refugees be "generated," casualties be continued. The United States would still have moral responsibility for the war, for continuing it and sustaining it. We will have made of the Vietnamese army, if the Nixon policy is successful, essentially a mercenary army fighting its own people for an unrepresentative government, and beyond that, if we are to accept the Rusk and Nixon statements, to protect or advance the interests of the free world.

It is my opinion that a new government could be agreed upon in South Vietnam; that a negotiated settlement would not result in massive executions as some people charge; that the North Vietnamese would not take over South Vietnam – at least not for a long period of time, meaning years; and that the North Vietnamese would respond with a release of American prisoners of war to an honest commitment on our part to end the war. This was substantially the CIA's judgment in 1969.

I believe that the American people were ready to accept such a settlement in 1968 and that they are even more ready to accept it today.

What the US Can Do to Improve Relations

Negotiating with China

by Allen S. Whiting

So long as thousands of American military personnel remain there with facilities for our Strategic Air Command and the Seventh Fleet, so long as Taiwan serves as an important American intelligence base directed against the mainland, we share common interests with one side in the Chinese civil war. Moreover, it is the Nationalists, not the Communists, who have maintained the more aggressive and provocative posture in this war. Chiang's batteries on Quemoy block the largest harbor between Hong Kong and Shanghai. His espionage and sabotage teams from the offshore islands repeatedly raid nearby coastal areas. His airfields launch intelligence-collection aircraft. Our involvement in these operations, either explicit or implicit, belies our claim that we wish the People's Republic no harm.

We must end all assistance, direct and indirect, to the military establishment of the Republic of China if we are serious in our express desire to improve relations with the People's Republic. This does *not* mean we simply hand Taiwan over to mainland rule. The armed forces there are fully capable of defending themselves against any foreseeable threat for years to come. Should the military balance eventually change and no settlement ensue, the lead time necessary for Peking to develop and deploy amphibious weapons sufficient to threaten Taiwan gives us ample opportunity to reintroduce military assistance if this should be dictated by our commitments and interests at that time. Until then, we must make clear that Taiwan's continued separation from the mainland is not a function of our military presence and intelligence interests, but results from the inability of both sides to negotiate a mutually satisfactory agreement.

Indeed, we should explicitly declare that we recognize both sides now, agree Taiwan is part of China, but that its final, formal adherence depends upon arrangements between the authorities in Taipei and Peking. In the absence of such arrangements we obviously must deal with those in control of their respective territories without prejudice to the sovereignty and claims of the People's Republic of China. Should no agreed

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ALLEN S. WHITING *is professor of political science and an Associate at the University of Michigan Center for Chinese Studies. The comments published here are adapted from his testimony last week before the Senate Committee on Foreign Relations.*

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arrangement ever emerge, the people on Taiwan may redefine their status, at which time we would have to reexamine our position as, presumably, would Peking.

In the meantime, we should accept the People's Republic in the United Nations as the sole representative of China, ruled uninterruptedly and exclusively by that government since 1949. More than 100 China scholars in more than 50 American colleges and universities support this position. Resolutions toward this end have been introduced by Senators George McGovern, Mike Gravel and Edward Kennedy. We should also try to settle such matters as the blocked accounts which we have withheld from Peking against claims for American property confiscated after the establishment of the People's Republic. We should try to arrange mutual representation in both countries at the highest official level that can be agreed upon to serve the needs of trade and travel between the United States and the People's Republic. Diplomatic contacts should explore these and related problems through specially designated representatives in Ottawa or perhaps later at the United Nations. Peking has chosen its most experienced diplomat, Ambassador Huang Hua, to head the embassy in Canada. President Nixon should name a special ambassador-at-large, capable of undertaking the delicate and difficult mission of negotiating on a wide range of issues with China's representatives. His staff should include the best of the many China specialists in our Foreign Service, a group that has succeeded to the high traditions established by an earlier generation which was wiped out by the scourge of McCarthyism. Much needs to be done before the final exchange of ambassadors in the two capitals, but if both sides have the will, they can find the way.

In sum, we must enlarge our policy perspective beyond the tactics of how best to juggle alternative formulas for UN representation amidst the vagaries of what is dimly perceived in Washington as "public opinion." Repeatedly in the past we have allowed domestic politics rather than our strategic interests to dictate China policy. Thus we rebuffed Mao and Chou, we refused recognition, and interposed the Seventh Fleet in the Taiwan Strait. These decisions culminated in bloody war from November 1950 to July 1953, the first between Chinese and American armies in history. The chain of events could have been broken at any point, but considerations of domestic politics stayed the hands of President Truman and Secretary Acheson.

In the mid-fifties President Eisenhower and Secretary Dulles transformed our commitment to Chiang Kai-shek from one of American protection by executive order to a formal alliance, pledged by treaty. Yet when Peking followed this with new negotiatory probes, we countered with legal dodges at Warsaw, public denunciation at home, and nuclear blackmail at Quemoy. The pall rising from the political wreckage of those "who lost China" hung heavy over the White House, or so it was perceived inside the administration.

Now President Nixon and Secretary Rogers face another historic opportunity. Of course they will be told, "Now is not the time." Some will cite Soviet opposition, although why Moscow can normalize its relations with Peking while we cannot has never been made clear. Others will allege Japanese concern. But it is impossible to believe that reducing confrontation between these two nuclear powers in East Asia is against the interests of Japanese security and economic prosperity. On the contrary, Japanese interests can only gain from a lessening of war risks in the Taiwan Strait.

Reference to nuclear powers suggests another major area where the interests of Peking, Tokyo, and Washington, converge. A nuclear-free zone in Asia was once supported by the People's Republic, admittedly before it possessed nuclear weapons. However this does not preclude an effort to test its feasibility now, at least for northeast Asia. In addition to mutual pledges against their first use, agreements prohibiting the stationing of nuclear weapons in the region would strengthen Japanese opposition to acquiring an independent nuclear capability. The advent of still another nuclear power is sufficiently ominous in its implications to warrant the most determined effort by all concerned to forestall that eventuality.

Essential to any agreement on arms limitations is not only a convergence of interest but some symmetry of compromise. A nuclear-free zone in northeast Asia offers both factors. On the one side, we would pledge not to station nuclear weapons in South Korea; Japan would pledge not to develop its own nuclear capability or permit us to station weapons in any of its territory, including Okinawa. We, of course, would not station our Polaris-Poseidon fleet in the area. On the other side, the People's Republic would not position nuclear weapons within 1200 miles of Tokyo, excluding them from most of northeast and east China. Hopefully the Soviet Union would join the agreement, removing its nuclear weapons from adjacent territory.

Admittedly this is an imperfect scheme since it only removes part of the threat or incentive which might impel the Japanese to develop an independent nuclear capability. It would safeguard Tokyo against attack by a Chinese IRBM but not an ICBM. Similarly it would protect an important segment of China's industrial base against a nearby threat but leave it exposed to our more distant strike forces on Guam and in the United States. However, any improvement over an uncontrolled arms race is worth striving for, particularly if we can convince the leaders in Peking that we are genuinely interested in foreclosing further nuclear proliferation. Even should negotiations prove long, arduous, and perhaps in the end futile because of technical or other complications, they can provide an important forum for communication between governments. Toward this end American scholars and scientists should endeavor to establish a Chinese counterpart to the

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Pugwash conferences which have facilitated informal, confidential exchanges between American and Russian specialists in arms control.

Fortunately, not all our common interests require formal implementation. For one, China's acquisition of nuclear weapons offers us the best safeguard against Soviet attack we can ever hope to achieve. It is inconceivable that Peking would permit Moscow to eliminate our countervailing nuclear power, leaving Russia to dictate whatever terms it wished on the threat of striking elsewhere as it had at the United States. No Chinese government could hope for independence under such a Soviet nuclear hegemony. Thus Peking's growing nuclear arsenal, designed to deter attack against China, also deters attack against the United States. The requirements for a Soviet strike against various future Chinese weapons systems simultaneous with an attack against the United States, sufficiently successful to prevent unacceptable retaliatory damage, make such a move virtually impossible to plan. Nor can any prior agreement guarantee Chinese passivity in the face of an unprecedented act with such far-reaching consequences.

Our minds may still be too dulled by decades of dogma on China to grasp the full implication of the new nuclear world that is emerging. But at least we can see that in the very near future a "hot line" to Peking will be as necessary as one to Moscow. Moreover if agreement between the two superpowers on defensive systems is limited by the capability of a third power which sees the two as conspiring against it, then we must strive to bring that third power into separate or joint negotiations. In the nuclear age we can neither preserve the status quo of power nor can we manage global change in uneasy partnership with Moscow. Most important, we must not leave for our children the heritage of Chinese hate and suspicion our fathers left for us, hate and suspicion born of what all Chinese, Nationalist or Communist, call "a century of shame and humiliation." For China, "gunboat diplomacy" of the nineteenth century has become "nuclear diplomacy" in the twentieth century. Thus in 1953 and 1958 we threatened nuclear destruction if Peking did not submit to our will in the Korean War and the Quemoy Crisis. In 1969 Moscow muttered nuclear threats during the long summer of border clashes. These are poor precedents for China to emulate as acceptable behavior for participation in the so-called family of nations.

Admittedly our China policy alternatives are difficult and painful. They are difficult because decades of confrontation have entrenched conflicting interests and perceptions, complicating compromise and, in some cases, ruling it out altogether. They are painful because cherished myths and goals are not abandoned easily, regardless of how great is their distance from reality. Finally, since compromise is not possible in all cases, concessions will sometimes have to be one-sided. History is seldom the interaction of mutually responsible states where blame can be apportioned evenly, and never can it be relieved, even if rewritten, so as to tidy up any imbalance.

However, the arts of statecraft and diplomacy are designed to cope with precisely these problems. The time has come to apply these arts, to move beyond rhetoric and symbolic acts to the major undertaking of negotiations toward the normalization of relations between the United States and the People's Republic of China.

Turning Sour

Democratic Party Reform

by Ken Bode

Eighteen months ago, the McGovern (now Fraser) Commission of the national Democratic Party adopted 18 "guidelines" as binding on all state Democratic parties in their selection of delegates to the 1972 convention. These guidelines are the fulfillment of the 1968 national convention's promise of party reform. Comprised of the supporters of all the '68 presidential candidates, the commission was chaired by Sen. George McGovern. After conducting extensive public hearings and considering the full range of procedures used in choosing delegates, commission members concluded

KEN BODE *is director of the Center for Political Reform. Formerly he was research director for the McGovern Commission of the Democratic Party and legislative assistant to Senator George McGovern.*

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that the presidential nominating process in the Democratic Party was badly flawed. The guidelines they adopted were designed to eliminate the procedural irregularities and unfair practices which nearly tore the party apart in 1968. McGovern announced that, "For the first time in history, when faced with reform or death, a political party has chosen reform."

The reform is on the verge of turning sour. By this time next year, all of the 23 to 25 state primaries will be over, the convention will be scant weeks away. Yet, according to official Democratic National Committee statistics, here is how matters stand:

- Only 8 states (Alabama, Iowa, Maine, Mississippi, Missouri, New Hampshire, North Carolina, Oklahoma) are in full compliance with the commission's guidelines. These states will have only about 10 percent of the 1972 delegates.
- Not one of the 11 largest states (New York, California, Pennsylvania, Illinois, Ohio, Michigan, Texas, New Jersey, Massachusetts, Florida, Indiana) has satisfied all of the guidelines. Together, these states will account for a minimum of 1684 delegates, or 56 percent of the total. If the Democratic National Committee is unsuccessful in reversing the ruling of a Federal District judge in Washington, DC, which ordered the convention to be apportioned solely on the basis of previous Democratic vote for President, these states will have 63 percent of the total.
- In 1968, about 38 percent of the delegates were chosen by processes which began two to four years before the convention. The commission placed 32 states and territories on notice that their "untimely" procedures were in violation of the Call to the 1972 Convention, which provides that no processes bearing on the selection of delegates may begin before January 1, 1972. As of now, 24 of these states have not made the required changes. (In four of these, state reform commissions have sent appropriate recommendations to the state party.)
- Only 5.5 percent of the 1968 delegates were black. The commission required state parties to take steps to ensure that members of racial minorities were included on the delegation "in reasonable relationship" to their presence in the population. To date, 40 states have not complied.
- Women (13 percent) and young people under 30 (4 percent) were also seriously underrepresented in Chicago in 1968. Again, the commission required that procedures be adopted to correct the imbalance in the future. Thirty-two states have taken no official action.

In other areas, state party action has been better. Thirty-six states have adopted adequate standards of public notice; 32 have explicitly banned the unit rule, and 46 preclude ex-officio delegates. On the remaining guidelines, performance is mixed.

In North Carolina, prior to the passage of the new presidential primary, Democrats undertook a major overhaul of the party structure, starting at the precinct level. Blacks, women and young people were accorded greater representation in the precinct committees and at the county and state conventions. At the 1970 state convention, the effects of the change were unmistakable. Not only were the delegates more broadly representative of the North Carolina Democratic Party, they were far more liberal than the old-liners. Included in the convention's platform was an endorsement of the controversial McGovern-Hatfield "Amendment to End the War." The high spot of the convention came when US Senator B. Everett Jordan (no dove) strode to the front of the hall and flashed the peace sign to the cheering delegates. Nevertheless, the platform so shocked the Old Guard in Raleigh that they refused to print it for general distribution. Now, however, there is broad agreement that the reforms were necessary to revitalize a party whose 1968 electoral votes went to the GOP for the first time since 1928.

Unlike North Carolina, many states have delayed making changes that would put them in conformity with the national guidelines. Take the seven largest states: In the paragraphs below, the numbers in parentheses refer to the numbers of convention delegates originally allotted by the Democratic National Committee.

Michigan (132) – Here, an elaborate reform effort begun in early 1970 culminated in a special reform convention and a call for legislation necessary to bring the state into compliance. Progress has since halted. At the present time, precinct committeemen elected in August 1970 are the automatic and only delegates to county conventions to be held in the spring of 1972. These county conventions will choose delegates to the state convention, at which the national convention delegation will be elected. Unfortunately, in the 1970 primary, the statutory voting age in the state was 21 years. Since then, all 18-year-olds have been enfranchised for presidential voting (including the nominating process).

Thus, everyone between the ages of 18 and 23 years (or approximately one million residents) has already been shut out of the nominating process. A bill ordering a new precinct primary was recently dislodged from the House elections committee in Lansing, but no one gives it much hope of passage. Democrats blame Republican Gov. Milliken; in reality, there is buck passing by both parties. If a new primary were held, state legislators would have to run at the same time. They fear that stepped-up public interest in convention delegate races would stimulate additional primary challenges for themselves. Meanwhile, liberals in both parties, concerned about shutting new voters out of the presidential selection process, are considering legal action against the state which would ask the court to order a direct election of national convention delegates.

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(Virtually identical situations exist in North Dakota and Wyoming where legislatures have already closed and judicial relief is the only alternative.)

New York (278) – The State Committee's power to appoint delegates has been eliminated. However, the presidential preference of those who will be running for convention delegates will still not be indicated on the ballot. So voters in the primary are not given the information needed to cast an intelligent ballot. Since this is in violation of the minimum provisions of the McGovern-Fraser Commission, Democrats in Albany introduced corrective legislation—and immediately declared it dead. "Rockefeller doesn't want it," said one upstate leader. "He doesn't want *his* delegates identified on the Republican ballot in 1972."

When reformers checked the situation in the Assembly, however, they found little Democratic activity on behalf of the bill. With the quiet acquiescence of *both* parties, the legislation languished in committee until the legislature closed. Democratic presidential aspirants will have to spend a small fortune in advertising merely to inform the voters which delegates will vote for whom at the national convention.

Pennsylvania (182) – With the approval of Gov. Milton Schapp, an official party reform commission has prepared a detailed plan to revitalize the primary and reduce the influence of the State Executive Committee in choosing the delegation. The new system would have 75 percent of the delegates elected directly in the primary, 15 percent chosen in a special convention, and the remaining 10 percent appointed by a newly elected state committee. This plan will require that major statutory changes be wrung from an often uncooperative legislature later this year. The Rizzo-Tate-Barr faction in Philadelphia, with the statewide support of organized labor, is expected to maneuver to neutralize the effects of the reforms even before then. Schapp's active opposition to Frank Rizzo in the recent mayoralty primary widened the split between Philadelphia and Harrisburg. Members of the state reform commission expect the powerful city committees to approve the plan only when they have figured out how the new system will permit them to keep a tight grip on delegates elected from their districts as they had in 1968. Then, for example, black delegates from Philadelphia County voted as a bloc to seat the Lester Maddox "regular" delegation from Georgia and to leave Julian Bond's challenge group out in the cold.

A meeting at which the state committee was to give final approval to the reform plan was scheduled for late last month. At the behest of the representatives from Philadelphia, it was canceled on two days notice. The proposals, they said, required more time for study.

Ohio (153) – With its early February filing date, multiple urban areas making for an expensive campaign, and a Democratic Party comprised largely of county fiefdoms, Ohio's primary has rarely been attractive to presidential contenders. Democratic Governor John Gilligan seems to believe that 1972 would be an inopportune time to change that situation. Gilligan, in an exclusive interview with the *Cincinnati Post*, has made it clear to Democratic presidential hopefuls that any early attempt to snare delegates in Ohio "will be considered a hostile, unfriendly, disruptive act." Coming on the eve of the Ohio Democratic Convention at which the party's first set of rules was to be adopted, Gilligan's announcement was appalling to reformers.

As the Democratic Party's best-known Governor, Gilligan could be in a good position in a deadlocked Convention with a unified delegation behind him. He is now quietly maneuvering to lock up the Ohio delegation early. According to Gilligan, "in all probability" there will be an official party delegate slate, and the major presidential contenders will be invited out of Ohio. Barring major changes in Ohio law, which the GOP-dominated legislature could easily block, any official party slate would be prepared or endorsed by a State Executive Committee elected in 1970. Such action would be in violation of the Call to the 1972 Democratic Convention, which precludes delegate selection processes that begin prior to 1972. If Gilligan gets an official "uncommitted" slate, he will doubtless freeze out the major presidential contenders; none could risk a bruising campaign and defeat in Ohio.

Texas (130) – The issue here is the unit rule and its effect. In 1968, the unit rule was applied in 224 of 254 Texas county conventions. Also in that year, the national convention forbade its future use everywhere, at all levels of the delegate selection process. The McGovern-Fraser Commission, however, only *recommended* that political minorities be granted a share of the delegates in proportion to their numbers on the convention floor. It will be easy, therefore, for the Texas state party to adopt rules which technically comply with national party standards, but which violate their fundamental purpose. Majorities once prevailed at precinct caucuses and county and state conventions by invoking the unit rule and binding minorities to vote against themselves at each successive level. Now, a winner-take-all system has been adopted for all levels, and minority delegates are simply left out. Texas liberals claim that party reform will mean nothing to them without a rule requiring political minorities be given a fair share of the delegates. They expect to carry their battle through to another credentials challenge in 1972 and are already laying the groundwork. Counting on a more liberal national convention in 1972 and a restructured and more representative credentials committee, the liberals hope to accomplish outside Texas what they could not achieve within. The split between the Yarborough-Connally wings of the Democratic Party endures, and the selection of

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delegates to the National Convention may well be the next test between the two factions. At the moment, Lt. Governor Ben Barnes, a John Connally protege, is openly maneuvering to bring Texas' 130-man delegation to the convention as a bloc, ostensibly to "offset California".

California (271) – California is the largest remaining winner-take-all state. If Gilligan in Ohio and Barnes in Texas fail to hold their delegations on a favorite-son basis, it could be the only totally unified delegation of any size at the 1972 convention. Since California alone will provide one-fifth of the total votes necessary for nomination, no serious candidate can afford to pass up what will predictably be the most expensive primary election in the country's history. Therefore, California Democrats are likely to be presented with a large number of choices on the primary ballot, and the winner-take-all victor could poll as little as 25 percent of the popular vote. Recognizing that they themselves may be split five to six different ways in the upcoming primary contest, the state's Democratic leaders are eager to abandon the old system whereby a slate of bona fide supporters of each candidate was filed before the primary. The key is to find a way to put supporters of all the competing candidates on the delegation regardless of who wins, and still meet the commission guidelines which give the winning candidate the right of final approval of all delegates.

Party leaders hope to accomplish this through a post-primary selection procedure which combines an elaborate illusion of rank-and-file influence with plenty of room to deal backstage for spots on the delegation. It should be easy enough, they figure, to impress the winning presidential candidate with the need to unify the party so that the state's 45 electoral votes are certain to wind up in the Democratic column in November. For the Democratic leaders in Sacramento who can use their influence within the party to help "balance" the delegation, this system will work fine. It weighs more harshly on the primary winner who must leave many of his own supporters behind and accept delegates who worked actively against him in the primary and may do so at the convention.

Illinois (170) – Reform legislation is pending in Springfield which would, for the first time, require that candidates for convention delegate list a presidential preference on the primary ballot (or run "uncommitted"). Chicago's Mayor Richard Daley is believed to be privately against the change, and is determined, in any case, to run a full slate of uncommitted delegates in Cook County, where his strength in the wards is considered unbeatable. By making it clear that he intends to retain his control of the Illinois delegation, Daley will effectively invite all the presidential contenders to keep out of his state. Interlopers are certain to incur the mayor's enmity. Reformers here, as in Texas, believe that their only hope of a fair chance may be through the national convention's credentials committee. They assume that, if challenged in the primary, Daley will use all the resources of his patronage-rich machine to elect his delegates. The reformers, therefore, hope to enter slates of their own and to demonstrate to the credentials committee that the mayor's subsequent tactics deprived all other Illinois Democrats of any meaningful influence in the presidential nominating process. "We may not win our challenge," says one reformer who has already begun to lay the groundwork with a barrage of letters to the DNC, "but we'll make Daley look awful beating us."

COMING: Bad Day at Black Mesa – a report by Peter Barnes on the Hopi Indians' pollution fight

The McGovern-Fraser Commission itself has been inactive for nearly 18 months. Three of its members (Senators George McGovern, Harold Hughes and Birch Bayh) are among the candidates for the Democratic nomination. Each will attest that this has not diminished his commitment to the commission's work, but aides admit that as they travel from state to state, reform is not a number-one priority. Several other members of the commission are prominantly associated with presidential campaigns (Patti Knox with Hughes, Jack English and George Mitchell with Sen. Edmund Muskie). Though not a member of the commission, Muskie has given verbal support to its efforts, and Maine is one of the eight states that the DNC has declared to be in full compliance with the guidelines. (Another is Hughes' home state of Iowa.)

Muskie recently evinced a stepped-up interest in reform when he sent a letter to National Chairman Lawrence O'Brien in which he asked for a meeting of all Democratic presidential aspirants so they might be informed on the status of state-by-state compliance with the commission guidelines. Muskie proposes that all Democratic candidates should join in a "common commitment to reject the support of delegates from states which have made inadequate efforts to comply with the commission's guidelines."

In many states, the required changes will necessitate new legislation, and the commission recognized that this might be difficult in the short run. To avoid supremacy struggles between itself and state legislatures, an "all feasible efforts" standard was established where statutory changes were required. This standard clearly

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places the obligation on the party to comply, but provides a legal loophole if a genuine legislative effort fails. Although the commission has not yet gotten into the business of interpreting just what constitutes "all feasible efforts" in specific cases, it cannot dodge the question forever.

Prior to the opening of the 1971 state legislative sessions, DNC records indicated that 23 states needed legislative action. At this writing, only two – Arkansas and Florida – have made the necessary changes. Legislation is still pending in a number of states (California, Illinois, Ohio, Massachusetts), though in some (Michigan, Maryland) it is regarded as dead. In most instances, the legislatures have adjourned without acting (Connecticut, Indiana, Nebraska, North and South Dakota, West Virginia, and Wyoming).

It is around the "all feasible efforts" standard that the next controversy may rage. There are signs that the GOP may be asked to bear the brunt of the blame where legislation was introduced but not passed – regardless of the activity or inactivity of the Democrats. Speaking to the Wisconsin State Democratic Convention, Senator Muskie said: "In New York and Indiana, in Wyoming and the Dakotas and elsewhere, Republican legislatures have blocked the bills which are necessary for reform. As a result, some state Democratic organizations are stuck with outmoded procedures and unresponsive systems – procedures and systems they may not want, but cannot undo."

One can't make a serious case that the Democratic leadership in Albany and Bismarck made "all feasible efforts" to pass reform bills in their legislatures. One North Dakota legislator says that he was not even aware of the existence of a bill in Bismarck until after the session had ended. In Wyoming and South Dakota, the GOP was more directly implicated in killing the legislation.

Much now depends on the attitude taken by the commission to "all feasible efforts." It could put the burden of reform squarely on state parties by requiring them to demonstrate genuine legislative initiatives. It could refuse to certify the delegate process unless it was shown that failure resulted *in spite* of active Democrat support of reform bills. On the other hand, the commission could choose to certify states where the appropriate legislation was merely introduced. If it takes the latter course, reformers will have been notified to take their chances with a credentials challenge, and the ensuing chaos in 1972 could be awesome.

Where the 1971 state legislative sessions have ended, local Democrats' only recourse for securing enforcement of national party standards is through legal action. This will be an uphill fight where constitutional questions are not involved, because the courts have traditionally avoided intra-party battles. However, the McGovern-Fraser Commission, which wrote these guidelines, regards them as mandatory for 1972, and the Democratic National Committee has officially adopted and attached them to the Preliminary Call to the 1972 Convention, with notice to state chairmen that they are binding. The commission and the Democratic National Committee could demonstrate their commitment to compliance by joining suits brought against recalcitrant states and state parties. Where Democrats are seeking to demonstrate the binding effect of national party rules, such participation would be crucial in building their case. It would also put the rest of the country on notice that the reforms must be taken seriously.

But that course seems unlikely, at least for the Democratic National Committee. While stressing his commitment to reforms and their implementation, National Chairman Lawrence O'Brien has done little to speed compliance beyond periodic reminders to state chairmen. Meanwhile, the McGovern-Fraser Commission staff has been reduced to one man, who admits that he has little time to do more than keep track of compliance and advise state parties whether their proposals satisfy commission standards.

Behind the closed doors of a recent Democratic Party Finance Council meeting, Howard Samuels, head of New York City's Off-Track Betting experiment, urged that more party money be earmarked for the reform movement. Samuels received virtually no support for his proposal from other members of the council, and O'Brien made it clear that he regarded the mere suggestion as a personal attack on his stewardship.

Leaving aside his personal disposition, O'Brien is caught on the horns of a dilemma. The party has promised reform, but the Democrats best able to retire the $9 million debt have no interest in reform. For the time being, O'Brien has solved this problem by talking change but refusing to use the personal weight of his office or national party resources to ensure that it comes about by 1972.

The commission may be another matter, however. The new chairman, Congressman Donald Fraser, has called the full membership together for its first meeting since November, 1969. Comforted in the interim period by regular assurances that all has been proceeding according to plan, the members may be surprised to learn the state-by-state details of noncompliance.

The commission could do much to assure fidelity to its own guidelines by setting an active agenda to promote reform within the party. It might authorize Chairman Fraser to initiate legal actions to compel compliance and to join such actions begun by Democrats in the states. The ultimate test of the guidelines will take place before the Committee on Credentials of the 1972 convention. Unless it undertakes to report directly and explicitly to the credentials committee on which states have and have not carried the burden of the required reforms, the commission itself will not have made "all feasible efforts" to ensure that the party's pledge to its members has been fulfilled.

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Stanley Kauffmann from Germany

Stage Directions

One of the nice things about going to the German theater is that you don't need to know German. (Mine is sketchy.) If you have some knowledge of dramatic literature, you can go to two or three plays a week; the repertory theaters are always doing some familiar works. I'm in Europe for two months, courtesy of the Ford Foundation, to look at theater and film and allied matters, and am spending the first five weeks in Germany. Herewith a first report.

Frankfurt. I begin at Experimenta 4. This is the fourth biennial festival, in Frankfurt, of new theater and film and music from all over (West) Germany. I see three plays and parts of two film shows. The latter seem to be groping their way upward toward the lower reaches of the American Underground. Only one of the plays is worth comment, *Heimarbeit*, which means *Homework*, but not in the schoolboy sense. It's by Franz Xaver Kroetz, a relatively new and rapidly rising playwright, and it's performed by the Munich Kammerspiele. Kroetz has focussed on the poverty that still exists under the postwar Economic Miracle. There are only two characters, a Bavarian husband and wife, and their scenes are interwoven with film clips shot in that very stage setting with the same two actors plus one other. The materials are out of Büchner and Hauptmann – the enforced, empirical morality of the poor – but Kroetz' tight, modern structure, with everything understated, gives the play both pertinence and a sense of history. The poor we always have with us.

And, through this play, I run straight into the hottest controversy in the German theater. After the ovation for *Heimarbeit*, one of the two excellent actors tells the audience that this is a sample of the work that Heinar Kipphardt did as *Dramaturg* of their Munich theater. More applause, for Kipphardt has just been released from his job, and the papers are full of uproar. He's in the audience and comes up to answer questions – a stocky, moustached, gentle man, trying to tell his truth, not whip up sympathy.

I'd better explain the term *Dramaturg*. (It will occur again.) We have no such function in the US, though several resident theaters claim to have Literary Managers. The closest parallel I know is Kenneth Tynan's job with the British National Theater. It's the primary task of the *Dramaturg* to provide his *Intendant* (Managing Director) with a choice of plays: not merely to read such scripts as are submitted, but to scout the world for good new plays, to commission works, to suggest relevant works of the past. Sometimes he helps administer the theater, and he is usually a close collaborator with the *Intendant* on the general artistic tone and policy.

Kipphardt is also a playwright, best known in the US for his "documentary," *In the Matter of J. Robert Oppenheimer*, which was produced in Los Angeles and New York. During his years at the Kammerspiele, where there has apparently been cool respect between him and the *Intendant*, his views and recommendations have brought him into conflict with the governmental agencies that subsidize the theater. Lately the Kammerspiele presented Wolf Biermann's *Der Dra-Dra* (a child's word for dragon). Biermann is an East Berliner, unpopular there because of his anti-Stalinist Marxism. Kipphardt prepared a program booklet for the Munich production, as part of his job, in which he reportedly implied that Biermann's East German dragons had their counterparts in some West German figures like the Munich mayor and Willy Brandt.

Enter Günter Grass, the famous novelist, who is very active in the Social Democratic Party (of Brandt). Grass, who in the minds of many has become an Establishment fat-cat, attacked Kipphardt in the press; by coincidence, Kipphardt's contract, just terminating, was not renewed. Now the feuilleton sections of newspapers are full of the affair, and the latest issue of *Die Deutsche Bühne*, a monthly about the German theater, devotes its first four pages to it. I've just seen the draft of a letter, to be sent to the press, signed by ten prominent directors who promise never to work at the Kammerspiele unless Kipphardt is reinstated. (Which isn't likely.)

The day after *Heimarbeit*, I lunch with Kipphardt, and we converse in his German and my English. As delicately as possible, I ask whether there isn't a certain naiveté in the reaction to the government's reaction – in fact, a false naiveté. Don't radical artists pretend shock and outrage when things like this happen, although they are inevitable? More courteously than I probably deserve, he replies that even if this is true, the outrage is part of the process, and in any event a theater man of certain convictions must set out to reap the result of his convictions. What's his future, I ask, besides writing? He thinks he might work through television. The funds for German TV come directly from the public, in license fees, not from advertisers or government. The TV peo-

(Continued on page 33)

Films Worth Seeing

The Clowns. Federico Fellini's documentary valentine to the circus. It has both sentiment and sentimentality, all juggled in those wonderful Fellini fingertips. Great for children, if they don't mind Italian dialogue with subtitles.

The Confession. Yves Montand as the victim of political purge, Czechoslovakia, 1952. Directed by Costa-Gavras, who made *Z*, less zippily than *Z* but with some ingenious effect.

Derby. Robert Kaylor has made a sharp, gritty documentary about the world of roller derbies and the people who go to them. So vivid that the screen almost smells at times.

Une Femme Douce. Not one of Robert Bresson's best, still a work by an exceptional artist. It misses the spiritual drama of its source, Dostoevsky's *A Gentle Creature*, still it lives on a rarefied level.

Little Big Man. Dustin Hoffman lives to be 121 (which I hope comes true) in this picaresque tale of a Western trapper who inhabits both white and Indian societies. Arthur Penn, who directed, leans on the moralizing a bit but does generally well.

Walkabout. Two Australian youngsters, adolescent girl and younger brother, are stranded in the desert with an aborigine youth. A gruesome beginning and a (perhaps) saddening end, otherwise good for children. Lots of nice fellowship in nature. Perhaps you could try it first?

SK

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Reconstruction Or Revolution?

Being And Doing by Marcus Raskin

(Random House; $10)

Middle class America is beginning to produce a rationale for what has been called Phase II of the American Revolution. Saul Alinsky, in his recent book *Rules for Radicals*, says, "Organization for action will now and in the decade ahead center upon America's white middle class. That is where the power is. When more than three-fourths of our people from both the point of view of economics and of their self-identification are middle class, it is obvious that their action or inaction will determine the direction of change." This is significant; it cuts through the class conflict rhetoric that has made Marxist ideologues so ineffectual for the American experience. Alinsky has been among the first to recognize that the alienation of the middle class from political power—their sense of impotence in dealing both with their young and their rulers—makes them a crucial source of potential support for a cultural revolution.

Social power means having the capacity to make or change social policy. The poor, the black, the Chicano, the Indian, the young have long known they did not have power. The middle class, seduced by the opiate of more or less secure and affluent income, supposed that it had power. But the middle class is coming down from its affluence high. As Senator Proxmire pointed out recently, the reason Lockheed is able to marshal government support to subsidize its ineptness whereas the 10,000 small businesses that failed last year (and whose aggregate economic significance is greater than Lockheed's) cannot get such support is due simply to Lockheed's corporate "clout." The middle class is finding out that the one-man one-vote theory of political decision making is a myth. One corporate president's clout is easily worth *at least* 10,000 votes, especially if his corporation does business with the Pentagon. Concomitantly as his vote loses value, the middle-class man is discovering, so does his personal value, his value as a man, diminish in the maze of corporate finance, corporate government, corporate mentality, corporate metaphysics. The executive, the engineer, the researcher, the janitor never were human beings to the corporate mentality; they were statistical averages. And to that mind human beings are and always have been expendable in the face of profit and loss statistics. So the middle-class man may well be conditioned for a radical politics. Still, his addition to the ranks will only expand the spectrum of radical babel.

Marcus Raskin's new book, *Being and Doing*, is an attempt to synthesize the voices of radicalism and provide a critique of what he calls "the colonized reality" of American society and then propose a nonprogrammatic, nonideological, and nonviolent theory for radical change. He is in effect trying to do for Phase II of the American Revolution what Marx did for the world Communist revolution—provide a historical analysis of the inevitably undemocratic, dehumanizing, and exploitive consequences endemic to a "colonizing" culture. He wants, however, to lay to rest the perturbed spirit of the concept of *revolution.* His argument is the pragmatic one that, inasmuch as the arms are all on the side of the establishment, including nuclear arms, and because the establishment will pause only slightly before using them, an armed revolt is foolish and wasteful. Further, he says, even if by some "miracle" a revolution were successful it would be no improvement over the status quo because it "merely causes a new class to come forward which uses the same tactics and stratagems to stay on top as the ones who were replaced through force." He cites the example of the Russian Revolution, where "state socialism . . . turns out to be the mirror of corporate socialism in the West." In short, revolution is simply a violent means of reinstituting authoritarianism. He wants, also, to be able to talk about means of effecting fundamental change without raising the hysteria attendant on the spectral rhetoric of revolution.

In replacing the concept of revolution with that of "reconstruction" Raskin is proposing a whole lot more than a change of vocabulary: a radical reconceiving of democratic personality, of the relation between the person and the society. In spite of the rhetoric of "the people" which surrounds both socialist and capitalist societies, Raskin contends rightly that their reality is defined by a colonizer-colonized relationship in which "a pyramidal political, social, and economic structure" is stabilized and maintained through the administration of pyramidal authority from the top down. Social institutions fall into "four overlapping colonies" the function of which is to condition the people for the orderly maintenance of the "pharaohistic" monolith. The military and its sycophants constitute the "Violence Colony," the "most crucial and dangerous of the colonies" which "dictates the contours of the political structure and announces that no social contract exists." Commerce and industry make up the "Plantation Colony," where the people are locked into a rhythm of working at "meaningless and unreal jobs" in order to supply themselves with goods that "they are led to want." This cycle keeps them busy and out of mischief. The educational system is the "Channeling Colony." "The most significant short-term purpose of the school is to break people in to accepting authority structures. . . . If anything is actually learned in the schools it is the specialization which buttresses pyramidal authority." The media, specifically television, make up the "Dream Colony," which "provides a surrogate of action and passion for the colonized, replacing their own, which could stem from human feeling—their actions and passions." Its purpose is to cultivate and feed the popular taste for the Plantation and Violence Colonies. Thus the whole structure is politically cyclic. The omnipresence of the pyramid justifies the authority of the colonies and their authority insures the pyramid against dismantling. The edifice is everything. The people are merely agents for its support.

To reconstruct the vertical oppressiveness of this sytem the ego must undergo a conversion from its submission to the depersonalizing "beside himself" and "hierarchic other" and from the materialistic "I-It"

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relationship. Raskin calls on the theological vocabulary of Martin Buber to explain at once the means and ends of *reconstruction*. The democratic personality must achieve the "I-Thou" and "I-in-We" relationships that will lead to the "Cooperative Other." Otherwise, so long as the people remain submissive to the hierarchic other, they are going to be "characterized," that is their reality will be subsumed in the "role" that the pyramidal state either seduces or coerces them to play.

In other words men must *feel* like free men in order to act like free men. They must trust their instinctive feeling for freedom or they cannot act independently of their pyramidal role. To emphasize this he argues for a kind of latter day sentimentalism, an epistemology of feeling, where "the rediscovery of feeling teaches me that I exist and then explains my identification, my relatedness with another." This is the basis for *reconstruction* because, "the quest for knowledge . . . becomes an attempt to develop the social and political structure . . . most relevant to the definition and resolution of obligation to human feeling rather than to function."

At a high philosophical level Raskin has performed his work well, but he has not satisfactorily dealt with the pragmatic question of *how* the spirit of *reconstruction* is going to be injected into a population that is still the product of pyramidal paternalism. And without resolving that problem his argument for *reconstruction* rather than revolution remains a merely dialectical achievement. Which means that for all the book's largeness of spirit and vision, for all its richness of imagination, for all the accuracy and insight of its social analysis, procedurally it leaves us very much where we began—haunted by the specter of a needed revolution we don't know how to engineer.

When, for example, Raskin offers "the project" as a reconstructive means of confrontation that will avoid the destructive violence of revolution, what he really offers is the status quo, where radical activists are likely to be victimized or martyred by *establishment* violence. The People's Park project in Berkeley, which he cites as a paramount instance, certainly demonstrates that any significant confrontation "project" will call out establishment force—guns, gas, beatings and mass arrests. And any effort to coordinate radical "projects" will, we know now, simply result in arrests and federal "conspiracy" charges. Even the Weathermen, without a theory of "the project," have concluded that isolated acts of violence do not constitute constructive revolutionary acts. So, though *reconstruction* provides a good theoretical guide for radical but humanistic action, it does not advance us beyond the action strategies we already have. In effect, it counsels patience, perhaps hoping to suggest that a long-term view of apparently failed projects will show them to be more radically useful than we are presently able to perceive. For liberals such a theory may be comforting, but for those who are more haunted it will just seem to be more of the same old thing.

Raskin's position seems exasperatingly Platonic and is occasionally vitiated by such statements as this: "The project method holds as primary the idea of terminating colonized relationships upon which the state operates but asserts the day-to-day goal of I-Thou as the objective of reconstructive society. Obviously, this goal is virtually unreachable. But it is necessary as the framework for social action." One appreciates the philosophic tenor of Raskin's work, but he does propose to treat of *doing* as well as being. And he does promise to talk of viable means of change. Given our despair and the urgency that Raskin sees surrounding us, articulating "virtually unreachable" goals seems too high-toned.

And, in discussing militarism and social change, Raskin observes that, "The task . . . is to persuade political forces in a coalition to bring about a situation wherein the national security state is *dismantled* before it undertakes a series of wars that will cause revolutionary coups from the right, which will then cause a full-scale fascist repression and other glories that twentieth-century man has invented." But who is to do the persuading and dismantling? Similarly his chapter on political-party reconstruction offers little help other than a cogent synthesis of the current prospects for the formation of a new third or fourth party. What he seems to be telling us is that we can have no realistic expectations of *dismantling* the military-industrial colony except through the kinds of largely ineffectual activities we are already engaged in. And that brings us right back to our revolutionary dilemma: either we accept the status quo and its minuscule "reforms" or we are forced to more frequent and organized confrontations which will necessarily result in revolutionary violence. For, whether we call the process reconstruction or revolution, there will come a moment in the dismantling where power must pass from unreconstructed hands. And because, as Raskin recognizes, they will not let go passively, that moment will be revolutionary.

In short, while Raskin does a brilliant and necessary job in philosophically defining the radical humanist *being*, he does not articulate really practical schemes for radical humanist *doing*. But being is not enough. If anything is to change, we need to be able to *act effectively* in accord with our sense of human being.

But, after all, these complaints may be off target. For Raskin does not primarily address himself to radicals or would-be revolutionaries. He is really talking to the increasingly disenfranchised middle class. And for them, from the tower of revolutionary babel, he has given coherence to a radical humanistic philosophy of freedom in a nondogmatic, noncorporate society. And perhaps for the first time in modern history he has provided a revolutionary (though he will not agree to the term) theory and vision which should not scare the middle class out of its wits. Here, rather than being reviled as the scourge of history, the middle class is acknowledged as the focal point of change. Here, rather than being "overthrown," the middle class is *invited in* to the revolutionary process.

It may not be possible to accomplish what Raskin has attempted, the devising of a philosophy of social change that does not depend on violence, dialectical dogma, or historical inevitability. But if there *is* to be a humanistic possibility for change, if there is to be a revolutionary movement based on inclusion rather than exclusion, if there is to be a revolution that we can survive as feeling human beings rather than socialistic or corporate automatons, and if there is to be a revolutionary movement that is predicated on the American experience, if, in other words, there is to be a just cultural revolution possible in *this* country, it will have to develop along the routes Raskin has charted.

Peter Michelson

NOTES ON CONTRIBUTORS

PETER MICHELSON'S The Aesthetics of Pornography *was recently published by Herder & Herder.* JONATHAN YARDLEY *is the book editor of the* Greensboro Daily News.

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Untold Secrets

The Life and Times of Horatio Hornblower by C.N. Parkinson

(Little, Brown; $6.95)

Fears that the untold secrets of the life of Horatio Hornblower went with C.S. Forester to his untimely grave are proved unfounded. C.N. Parkinson has done a fine job of inventing them. His "biography" of England's greatest naval hero is a masterful mixture of scholarship and affectionate satire that seems certain to broaden Viscount Hornblower's following still further.

It is a mixture not unlike that which Forester himself brought to the dozen Hornblower books. They are rich in amateur scholarship, in fine and keenly-observed details of the Regency and the Napoleonic Wars; I feel sure I am not alone in having found them more of an education than any textbook. They are equally rich in drama, self-mocking wit and elegant prose; one interrupts a Hornblower novel, or reaches its conclusion, only with the greatest reluctance. Forester's singular achievement was that he made Hornblower so real that eventually he merged into history itself; he and those who fought with or against him became as firmly a part of the past as that admirable but admittedly lesser Horatio, Lord Nelson, or even, by Jove, Boney.

Obviously Parkinson, the author of Laws as wise as they are witty, is a Hornblower believer. So much so that he had the public-spirited notion of taking up where Forester left off, of filling in the missing links – some, it should be added, of the greatest gravity – and providing at the same time a much-needed cradle-to-grave account of the great man's life. An audacious notion, too, for any Hornblower admirer will aver that tinkering with Forester's masterwork is roughly akin to emending Trevelyan or Macaulay.

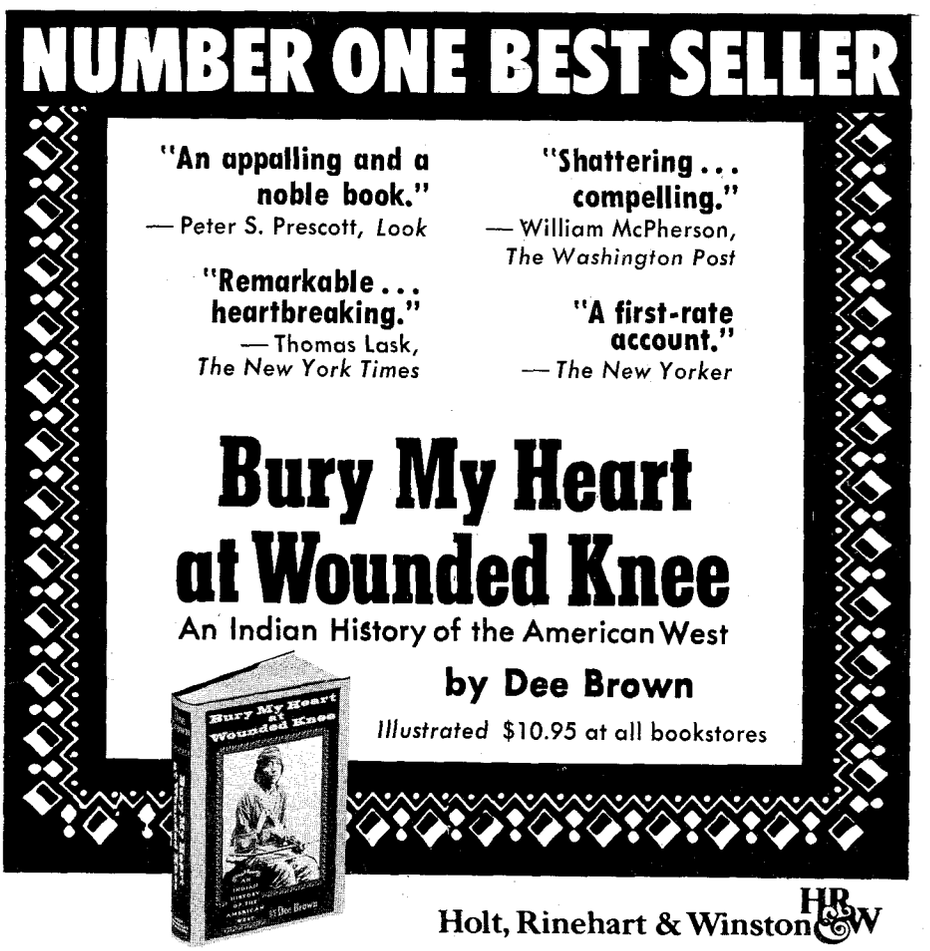
But Parkinson brings it off. *The Life and Times of Horatio Hornblower* is a splendid book. It can be read as pure biography, for if one is willing to succumb to the premise that there really *was* a Hornblower then one will read Parkinson with the same close interest that one brings to any serious biography. One marvels at the wealth of new and surprising detail he has uncovered in his researches: the poverty of Hornblower's childhood; the truth about the death of the despotic David Sawyer, captain of H.M.S. *Renown* in *Lieutenant Hornblower;* the hints of Lady Barbara's infidelities during a rocky period in their marriage; Hornblower's experiments in later life with the steam engine.

Hornblower was a skilled, patient, subtle practitioner of Admiralty politics whose rapid climb through the ranks was made possible by opportunism and manipulation as well as ability. His dream was "of higher command, of recognition, of seniority and fame," and he did not shy from employing such good fortune as a marriage to nobility to advance himself. He was not utterly continent: "If Horatio Hornblower had a weakness which could possibly lead even to a momentary neglect of duty," it was the charms of "many a (low-level) chambermaid or shopgirl." Seamen of less exalted station often felt the sting of his tongue, and to many he seemed "taciturn, surly and prosaic," a charge which much offended Lady Barbara.

But Hornblower *was,* withal, a very great man – so great, in fact, that Parkinson delights in tweaking his unfailing brilliance and the awe in which he was so widely held: "All went well on the day with the vicar making a speech, the villagers singing 'See the conquering hero comes,' Hornblower making his reply and the affair being rounded off by three cheers for Her Ladyship and as many for Sir Horatio." Or:

> When asked in later life about his place of origin, Horatio Hornblower would mention, modestly, a village in Kent where his father had been the physician, playing a weekly game of whist with the vicar, and where he himself as a boy would have to touch his hat to the squire. The actual circumstances were even more modest than he cared to admit for the place was hardly a village, his father scarcely a physician, the clergyman was not the vicar and the local dignatory was not really the squire.

Worth, in 1776-93 was so insignifi-


NUMBER ONE BEST SELLER
"An appalling and a noble book."
— Peter S. Prescott, Look
"Shattering . . . compelling."
— William McPherson, The Washington Post
"Remarkable . . . heartbreaking."
— Thomas Lask, The New York Times
"A first-rate account."
— The New Yorker
Bury My Heart at Wounded Knee
An Indian History of the American West
by Dee Brown
Illustrated $10.95 at all bookstores
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cant as to border on the actually disreputable.

Humble beginnings, and all that – the perfect story for a reverent Victorian biographer. Parkinson plays the role with gusto. Forester would be pleased and amused.

Jonathan Yardley

Notable

Venceremos Brigade: Young Americans Sharing the Life and Work of Revolutionary Cuba
by the Venceremos Brigade

(Simon and Schuster; Cloth, $8.95; Paper, $3.95)

In January of 1969, on the occasion of the tenth anniversary of the Cuban Revolution, Fidel Castro urged his people to show the power of that revolution, and as well build up the nation's strength, by harvesting ten million tons of sugar, two and a half million more than had ever before been harvested. In late November of 1969 216 young Americans, black and brown and white, left for Cuba by way of Mexico; and in February of 1970 687 more left – followed later that year by another group of 409. Apparently this year more youths will go; the Cuban government was pleased with the effort and has encouraged further such "brigades." A number of those who went and returned have now collected excerpts from diaries, interviews, tape-recorded statements, poems and essays, all written during and after the journey; and the result is an extraordinary book which makes compelling reading. Anyone who wants to know how our more radical youth think and feel and struggle hard and long with themselves will find in *Venceremos Brigade* one of the most valuable documents yet – all the more important because the young writers speak directly and openly, without the mediation of those academic experts who trail after young people, year after year, and shamelessly come up with one formulation after another to account for every turn and twist of "the movement" or "the counter-culture." What strikes one throughout the book is the intensity and dedication of these youthful men and women – and, as well, their lapses into ideological rhetoric and self-lacerating confessions. America is always Amerika, and alas, there is just about nothing good to say for this nation. Cuba is the future, and Castro a man who points to that future. Again and again the various writers bring up the difficulties they had with one another, the tensions that arose, not to mention doubts and misgivings. But always the explanations for those moments of anger or envy or greed or ambition are essentially sociological and political – which means the United States of America and its "system" makes for what is corruptible and corrupting in them – so that with a change in the way this nation is ruled, we would all of us somehow gradually become the "new men" many of the youths mention in their writings. And if that thoroughly hopeful view of the possibilities in human nature upon occasion lags badly in this or that young man or woman, then he or she knows what to do: blame the moment of hesitancy or skepticism on the past, on the Amerika in all of us that we can't shake off, and that keeps after us like the plague, even in a Cuban field of sugar cane. So it goes – the vicissitudes of passionate faith among twentieth century American youths, whose idealism is more than matched by sweeping and nasty remarks which serve only to demean the writers themselves.

The Autobiography of An Unknown South African
by Naboth Mokgatle

(University of California; $7.95)

This has to be one of the saddest books written in a long time – sad for the proud and sensitive man who wrote it, and sad for us in the so-called Western World, of which South Africa is very much a part. Naboth Mokgatle was born in Phokeng, well northwest of Johannesburg, to a Christian mother and a father who was the village master-thatcher. The father's family had not become influenced by (reading this man's life, one wants to say *prey to*) those earnest missionaries our Western democracies have sent, in Christ's name, all over the world – to convert people whose suffering at the hands of various imperial but devoutly Anglican or Catholic or Lutheran businessmen or military officers has surely resembled in many respects what went on almost 2000 years ago in the Holy Land. The boy grew up among his people; they lived in the Transvaal, were Besotho and spoke Sesotho. The first part of this autobiography is rich with accounts of tribal life; and we meet up with the white man as well, some decent and simple ministers and teachers, some at best obvious moral hypocrites, all too willing to push around and lord it over their "backward" victims. The boy gradually begins to sense the hopelessness of his future and sets off for Pretoria, where he promptly realizes he has found "progress" alright – but of a kind only white people can enjoy. Tough, shrewd, all too observant, he will not take lying down what has been decreed for him and millions of other blacks. He becomes politically active, fights more and more actively against an increasingly conservative South African government, and eventually, like so many others before and after him, ends up in jail. He gets out, but will not be silenced. He realizes he will one day be back in prison for life – so flees to

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Europe, where he now lives.

The author writes clear and at times powerful prose. He is not writing up his life out of vanity, or because he thinks himself important in some way, hence worth reading about. Rather, he is using a first person narrative style and the medium of autobiography in order to set down a long essay on his nation's social and political history. Through his eyes, his black eyes, we see South Africa's emergence as a powerful and utterly consolidated nation, dedicated to apartheid and all that such a social and economic system means for millions of other "unknown" men – who, like the author, can only struggle as best they can in the face of exceedingly well-armed, stubborn, and completely self-confident rulers whose way of life again and again is called God-given. Under such circumstances it is no wonder that this particular exiled South African, no doubt like so many others of his people still at home, is cautious indeed about the future. He hopes for a kinder fate for his people, but he will not flatly predict it. His unwillingness to become violent with rage or mute with despair is altogether remarkable, and no doubt at times will be beyond the comprehension of the white American and European readers he has addressed himself to in this powerful and grim book.

America, Inc. Who Owns and Operates The United States by Morton Mintz and Jerry S. Cohen

(Dial Press; $10)

Washington Post reporter Morton Mintz and Jerry Cohen, formerly staff director and chief counsel for the Senate antitrust and monopoly subcommittee have, like Diogenes, been on the road looking for honesty, and their luck has been poor too. The result of their efforts is a book that, relying heavily on stories done for the *Post* and items investigated by the subcommittee, convincingly indicts the system that has allowed American corporations to become "'America, Inc.' – a gigantic industrial and financial complex functioning much like a sovereign government."

What makes their book valuable is that: 1. it is carefully documented, which sets it apart from the run of the radical mill; 2. it is comprehensive, if not original, in that it brings all the main charges against the corporate system together in one volume; and 3. it is actually readable (although the same thing cannot be said for Ralph Nader's legal-brief prose style in the introduction.)

In that introduction Nader uses the phrase, "the balance sheet's morality." The authors illustrate this corporate attitude profusely and propose as antidote the creation of a federal board, a chartering agency, that would have authority over the huge corporations that have actually become "economic states," and would itself in some instances found public corporations in the public interest.

Because what they suggest makes such obvious good sense, none of it will probably come about; yet nobody will find it easy to refute this statement:

> There is nothing sacred about the corporation. No process of God or nature controlled the evolution which produced it. Rather, it developed as a method for accumulating capital and for shielding the user of that capital from individual liability. Thus, it is a mere legal device. And what the law has created the law must be free to control. The corporation cannot be permitted to be above the law, just as the citizen cannot. For too long, the corporation, as a device for doing business, has exploited and manipulated the very society that gave it life.

Television

Melvin Laird and CBS

When I was serving my country overseas I was once condemned by my commanding officer to burn classified documents at sunset nightly for a month, and poke through the ashes meticulously, because I had been lax in concealing from enemy eyes a pile of gasoline supply reports that were stamped Confidential. I will go to my grave persuaded that those reports would have been as useful to the enemy (if he had been anywhere near) as the files of my headquarters squadron's dental x-rays, and so I have long nursed a small grudge at the military's ways of achieving privacy. My grudge was of course beautifully sublimated when *The New York Times* recently made off with its truckload of top secret stuff from the now-famous McNamara study, and reminded me that the *Times* gives us a good deal to be thankful for in this age of the bad war. If the intelligence forces of this country in their various brands of haberdashery had had their way the citizenry might never have learned of that war at all.

In the presence of such virtue we are apt to forget that journalists do sin. Even the *Times* people themselves sin, and the lesser orders, such as those who supply tube news, sin mightily. Further, the sinning is so closely tied in with virtuous function that it is easily overlooked. The chief sinning is in the name of virtuous scoops. It is a professedly high-principled disregarding of what public officials and institutions always need and even sometimes deserve, a measure of privacy, a measure of respect. The privacy issue is excessively familiar at the moment – and I don't think I can add much to it except the observation that the man who drove the truck to the *Times* (whose name seems to be Ellsberg) should burn papers for a month – but the issue of respect hasn't been mentioned since the days of Charles Dickens. What, a public official worthy of respect? Unlikely. Yet respect is exactly what I respectfully want to mention.

Respect comes in different shapes and sizes, as does its absence. Maybe a good journalist can't afford to be respectful; to respect an official's wishes is possibly to fail to report that the official snitched the cash box from the church or gave the Bomb to Bali Bali. And yet a respect for the truth that the official may *provide* – as distinguished from the truth that he may be sitting on, trying to conceal – would seem to be basic; somewhere sometime in the relationship between journalist and official an acknowledgment needs to be made of the latter's at least imaginable honesty, intelligence, knowledge, dignity and/or

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authority – or we may as well give the journalist the official's job.

It is this acknowledgment that tends not to be made in this age of the ubiquitous, doubting, don't-give-me-any-of-your-handouts reporter. The official is instead treated shabbily by the press. The demands of newspaper or program merely take precedence over human demands. But the treatment is not less shabby because it is inadvertent, and nowhere is the shabbiness more evident in contemporary journalistic practice than the cutting room. The art of the news snippet has become a mighty one. All tube news is snippet, and to the average viewer the rationale for particular snippetry is seldom clear. In the interest of condensation, relevance and visual excitement the tube news people wield the scissors wildly: they perform extraordinarily severe operations upon their news clips, and do so constantly and conventionally as if there were no other way and no question at all of the propriety of the procedure.

When Melvin Laird was recently asked to take part in a new CBS documentary entitled "POWs – Pawns of War" he said he would do so only if he could be put on live. This condition was found unacceptable. According to the story in *The Washington Post* the CBS News bureau manager for Washington, William J. Small, said that "it is extremely rare that anyone is interviewed live on a documentary," which is certainly true since the genre of the documentary *is* a film genre, that is, something not live.

But Mr. Small went on, and got himself in muddier water: "When newspapers and magazines concede to a similar request by granting Mr. Laird a certain number of column inches to fill as he sees fit, then CBS will consider granting him a certain amount of time to appear live within an otherwise filmed documentary. After such consideration the answer will still be 'no.'" Assuming that these were actually Mr. Small's words, and that they were not surrounded by a variety of qualifications that the reporter chose to omit, I would say that Mr. Small was talking big. His righteous indignation led him astray as he constructed his analogy. Melvin Laird had not asked for space; CBS had asked for Laird. Laird had merely said that *if* he were to be interviewed he would have to impose a condition. And while that condition might not in fact be meetable within the documentary format it is not on other grounds the unreasonable condition that Mr. Small's sarcasm suggests it is. Laird merely wanted to be allowed to speak his *own* piece.

I don't suppose anybody has ever seriously questioned an editor's right to edit in this country except at the level of scholarly publications (where an editor is not permitted to change a comma without consulting the author), but an obligation has traditionally been attached to the right, the obligation to make sure that the editing not misrepresent the edited. This obligation, never as firmly fixed as the right, does now seem to be vanishing in important journalistic places – and my guess is that it never made the scene at all on TV. In other words Melvin Laird was right in assuming that unless he went on live his remarks would probably come out of the snippet factory in a way he had not intended; and his assertion that the sensitivity of the subject in question made it important to him that he say what he wanted to say as he wanted to say it was offensive to Mr. Small because Mr. Small does not recognize the traditional obligation. Snippet artists are increasingly in charge, except perhaps on the dear old *Times* itself, so it is not surprising that Laird's request should emerge in the news as a sort of an oddity. Imagine anybody wanting to control his own words!

A minimal initial *respect* for Laird and Laird's right to say what he wanted to say in his own way would have made Laird's request seem even normal to Mr. Small. But snippeters cannot afford to respect either persons or words when they set themselves down to their really serious snippeting business. For years I have been a casual observer of persons watching themselves or friends on TV – you know, "hurry up, Mom, Joe Blow's on Huntley Brinkley" – and I remember not one single observer in any such case emerging happy. I grant that the self is vain, but the one-sidedness of the reactions observed remains impressive. TV news never, I might say, offering up a law, reports on a speech or event in a way that insiders to the affair approve. Or, to put the law differently, tube news editing is always aimed at satisfying other interests than the insider's – which is why misrepresentation of the insider occurs as a matter of course, and why it is not even regarded as a vice when it occurs. Yet in all other fields of editing the editor *does* have an obligation to the insider, no matter how self-serving, and that obligation is at the heart of an amicable continuing relationship between an editor and his authors, his sources, his professional life's blood.

Misrepresentation is a vice so obviously built into the simple arithmetic of the snippet art – characteristically one has to whittle down an hour speech to thirty seconds – that obviously one can't impose a high ethic upon it. And even the *Times*, which is opposed to snippeteering and takes pride in its printing of complete texts, also has the capacity to report on a speech or event in a manner calculated to astonish an insider. So one shouldn't expect miracles. But my impression is that most of the major squabbles about TV clipping procedures are, as in the case of Mr. Small's retort, filled with high-minded suggestiveness about the rights of the press rather than appeals to the practical limits of programming, as if it had suddenly become not a necessity but a virtue to chop up people's speeches.

Somewhere in all the TV machinery the traditional scruples of editing have been misplaced. And to Mr. Small's possible rejoinder that they were misplaced first by newspapers and magazines I would only have to agree, meanwhile reaching for my boy scout text that tells me two (or more) wrongs do not make a right. Even the glories of the recent *Times* coup – partly shared by *The Washington Post*, the *Boston Globe*, the *Chicago Sun Times* and others (everybody with a Xerox machine wants in) – are not definitive proof that we can send our truckloads to the Press and rest easy.

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Correspondence

Anti-Trust: A reply

Sirs:

By his review of the Nader Study Group's *The Closed Enterprise System*, law professor Richard Posner ("Nader on Anti-Trust", June 26, 1971) in the words of Emmet John Hughes, has thrown not a dart but a fit.

For example, we are ridiculed for stressing the need for economic analysis in antitrust and then for accusing Donald Turner, Harvard law professor and former head of the Antitrust Division, for his "sublime economics." Yet in example after example we document how Turner misapplied his supposed economic sophistication by looking for a better case than was necessary, for a better case than the Supreme Court had frequently said was necessary. The specific context of the "sublime economics" reference was Turner's non-record against conglomerate mergers. In 1965, his first year in office, there were 1893 mergers involving $4 billion worth of assets; by 1968, his last year, there were 3932 mergers involving $13 billion. Economic analysis is one thing; economic paralysis another. Also, our study states that Detroit would balk at a pollution-free car because the "massive new investments required" would disrupt the entire capital structure of the industry; we are then accused of contradicting ourselves since other "massive" investments in distribution and style are cited as intentional barriers to entry by new firms. Where is the inconsistency? The point – that there is no incentive for auto firms to substitute a new massive investment for an old one – remains intact, as does the point that large capital, style and advertising outlays still constitute substantial "entry barriers" to new firms.

The Nader Report is taken to task for asserting that conglomerates have political power yet were unable to avert the antitrust suits filed against them. Nowhere is it said, nor *could* it be said, that political power guarantees political success in perpetuity; it does not allow a firm forever to avoid suit. The cases suppressed because of the political power of large corporations, cited in the Report, and their obvious impact on politics via campaign contributions, lobbying and business advisory groups, provide ample evidence of their political power. A proposal for a minimum four-month sentence for antitrust criminals is dismissed as "vindictive," although omitted in mention that in the history of the antitrust laws there have been only three instances when a businessman actually went to jail for antitrust crimes. Given this context of non-prosecution and judicial abuse of sentencing discretion, a minimum penalty is clearly warranted. Posner fires away at the charge that annual styling changes deny the consumer real choice, claiming that we ignore the choice of the imports. But the imports (many having styling changes), 15 percent of all sales, are almost all in the low price range. The vast bulk of American car purchases still lack the choice between buying a car without annual style changes, and paying less, and buying a car with style changes, and paying more.

"The least excusable method by which the Study Group tries to enlist the reader's interest and concern in antitrust policy," asserts Posner, "is by linking vigorous antitrust enforcement to the abatement of pollution and reduction of defense spending." We did not state that competitive firms do not pollute. *The Closed Enterprise System* merely shows how monopolies and shared monopolies (oligopolies), with little to gain competitively by developing new technologies, including antipollution devices, and better able to counter government efforts at regulation, are extremely laggard on pollution innovation. The Report's 13 pages of internal firm memoranda and discussion on the "Auto Smog Conspiracy" clearly connect industrial concentration with retardation of pollution progress. Posner does not even bother to explain our second "least excusable" error, the nexus between defense spending and antitrust. Does he doubt that increased competition in defense procurement would result in lower bids and fewer cost overruns (for fear of losing the next contract)? Sixty percent of all defense contracts are not awarded by competitive bidding but are "negotiated," usually with firms the Pentagon has gotten to know intimately. The resulting costs should be obvious to the industrial economist and to the taxpaying citizen.

The reviewer claims to have uncovered superficiality: "If only Don Turner had been tougher, Nick Katzenbach less political, Mary Jones less eager to become Chairman of the FTC, Lloyd Cutler less diabolical . . . ; then, the Study Group seems to imply, the antitrust millennium would have arrived. I don't agree that the failure of antitrust is a matter of the imperfections of individuals," *Nor did we*! The study itself stresses the following: "While antitrust politics is *a* problem, it is not the *only* problem. Influence-peddling, corruption and politicking occur, often on important cases, but in sum they occur on only a minority of cases. The real erosion of enforcement is a process at once more subtle and pervasive," which the Report then proceeds to discuss for nearly a thousand pages. This careful caveat, plus supporting analysis, should parry Posner's next gratuitous jab: "It [the failure of antitrust] is rooted in impersonal conditions which the authors seem in the main unaware." One of these "conditions" is the political power and regressive temper of small business groups. Again, the Report does not say that such groups cannot be powerful and conservative. They can be. We simply stress that large corporations in concentrated industries – more easily able to orchestrate their common acts – are especially powerful and regressive.

A basic Posner confusion traces to the scholarly distaste for discussion of personalities in the midst of institutional analysis. Such critics often retreat to that old chestnut – that we are a nation of laws, not men. But recent political science literature, such as Kenneth Culp Davis's *Discretionary Justice*, perceptively stress that we are *also* ruled by the men who decide when and how and if the law is to be enforced, a point Posner cannot be unaware of given his career in three government agencies. Therefore, while we think that inadequate antitrust enforcement implicates an anti-antitrust Congress, a slender budget, judicial timidity, corporate data secrecy, and difficulties of economic analysis, we also think that personal culpability cannot be ignored.

The Closed Enterprise System is derided as not quite scholarship. Why? Because we allegedly fail to tout those who differ with our views. The Report implies, correctly I would maintain, that there is a consensus among industrial economists that monopolies, shared monopolies, reciprocity and tie-ins are economically harmful. Although the "Chicago School" would no doubt differ, happily their view is not public policy. As a specific instance of our "one-sidedness," Posner protests that "Donald Turner, for example, is presented as the stereotype of the unworldly and ineffectual professor thrust

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into a position of responsibility." Now Turner, among other things, advocated the dissolution of shared monopolies in a 1959 book and a 1968 law review article – but refused a series of staff recommendations to file against them in his three-year stint at the Justice Department.

Finally, Posner posits that the Study is not scholarship because we began with our conclusions and worked backwards. Again, he has masterfully unearthed what was candidly admitted in the Report's *preface*, where the extent of any prior conclusions appears: "Our biases were three-fold. The maximization of consumer welfare was our talisman. . . .Second, although both will be discussed, it is anti-competitive *structure* more than *conduct* which cripples industrial performance and which should be the emphasis of rational antitrust policy. . . .And third, there was the suspicion of excessive economic power, *either* public or private." Exactly where does Posner, or many of his colleagues, list *their* deeply rooted assumptions when they publish?

Given the decades-long slant on antitrust, with business periodicals and defense counsel and economists subsidized by corporations emphasizing low-key antitrust enforcement, one would hope that there is room for an advocate of a different perspective. Is the content of this Report any less honest? Posner acknowledges that our "reportage in highly accurate in the main." Are the conclusions silly? Posner admits that "the overall conclusion of the study is correct!" Is the methodology sketchy? He praises it as "impressively thorough . . . fairly bristling with footnotes [and] reflecting exhaustive library research and interviewing." Then why his cries of distress?

Mark Green

MR. GREEN, *a legal consultant with the Center for Study of Responsive Law, is the principal author of* The Closed Enterprise System.

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Daley Politics

Sirs:

Your recent articles (Thomas M. Gray, April 3, and an editorial on May 29) vis-a-vis Mayor Daley and the Chicago Housing Authority's public housing sites in all-white neighborhoods could only mystify any one who read about these same events in the Chicago press, including the news articles written by the *Chicago Sun-Times'* Thomas M. Gray. Even a brief glance would show your treatment of the events in question does not square with the facts. For example: You state that Mayor Daley "allowed his housing authority to make public" a list of proposed low-income housing sites just before the April 6 mayorality. In fact, every effort was made by the Housing Authority over several months – including a direct eleventh-hour appeal to Justice Thurgood Marshall – to defer publishing its list until after the aldermanic and mayoralty elections. It made this request (according to a public statement in all of the local papers) because listing controversial city sites before the authority was in a position to simultaneously announce suburban sites would put the alderman in an untenable position and help guarantee certain defeat of the proposed sites in the City Council.

Only after the Appellate and Supreme Court refused to block the order of the District Court was the list submitted by the Housing Authority to the City Council and the Chicago Plan Commission. The Mayor's sole statement, three days later, was to the effect that the neighborhoods affected had the right to be consulted and that the time had come for the suburbs to accept their fair share of new low-income units.

He did not say, or suggest, that he was opposed to scattering low-income housing sites throughout the city, but to automatically build on all the sites proposed – without prior study or community consultation – would be "detrimental" to the various neighborhoods.

Several days after the Mayor's statement his opponent in the April 6th election took the position that the location of such sites should be decided by specially elected neighborhood councils – a proposal that almost certainly would have prevented building any scattered public housing.

Your "flip-flop" charge covers a post-election May 12th Letter of Intent between the city and local HUD offices setting up a timetable providing for more than 4000 scattered low-income housing units throughout the metropolitan area. While it strongly supported the need for suburban sites, it did not contradict or reverse any previous statement made by the Mayor or any other city official.

In light of the above, your assertion that a politically motivated Mayor forced the publication of the list of sites in order to go on record, once and for all, against the principle of scattered low-income housing, and then cynically reversed himself immediately after his reelection to a fifth term, is certainly not supported by the actual events.

Lewis W. Hill
Commissioner of Development and Planning Chairman, Department of Urban Renewal

In reply:

Mr. Hill makes much of a simple and obvious error in editing the brief editorial note which appears in the May 29 *New Republic* under the title "Mayor Daley's Flip-Flop."

His objection is to a sentence which, as published, reads "He (Daley) first allowed his housing authority to make public a series of proposed housing sites in white neighborhoods. . . ." Edited from the manuscript were the words ". . . in a highly provocative way."

As Mr. Hill knows, and as any reader of the longer article published in the April 3 *New Republic* also knows, the *manner* in which the housing authority dumped the politically explosive public housing sites proposed for white Chicago wards on the public is the issue, not the fact that lawyers for the housing authority succeeded in delaying publication until the eve of the local municipal election.

I specifically discussed this point twice with the staff member who wrote the letter to *The New Republic* which Mr. Hill signed. I'm surprised he persisted in making a straw man of this minor mistake in editing.

As for whether Mayor Daley "cynically reversed himself immediately after his reelection," in the words of Mr. Hill's scribe, consider the following chronology:

March 5 – Chicago Housing Authority makes public, reluctantly, a list of public housing sites for white Chicago wards, under a federal court order to desegregate. Under orders from the mayor's office, according to later court testimony, the housing authority did

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not make any effort to lessen the impact of the sites by explaining that future public housing would be low rise, scattered, etc.

March 8 – Daley, in a press conference, denounced the desegregation order and said the proposed housing would be "detrimental to all the people of Chicago and, in my opinion, should not be built."

March 9 – Daley, in a brief interview as he entered a breakfast campaign meeting, said Chicago would build its own public housing without federal assistance rather than obey the US District Court order to desegregate. Saying, as he had the previous day, that public housing should continue to be built in black neighborhoods, the mayor said, "We're tired of being kicked around and delayed and deferred by the federal government. In a few days I'll announce a program and you will see Chicago building housing where the people want it."

March 22 – In a rambling, 35-page speech before the City Club of Chicago, Mayor Daley reiterated his March 8 statement opposing the court-ordered desegregation of public housing. The speech amounted to his major campaign position on housing and tended to be more *apologia* for past actions than plans for the future. No mention was made of locally funded public housing, but the mayor appealed for state legislation and appropriations for the purpose. He denied a story in the *Chicago Sun-Times* that reported he had already agreed, in principle, with HUD to push desegregated public housing – after the election.

April 6 – Mayor Daley was re-elected to a fifth term, by a plurality of more than 400,000 votes – about 70 per cent.

May 12 – Daley affixed his signature to the agreement the existence of which he had denied in the March 22 City Club speech. It provided, among other things, for speedy City Council passage of public housing sites in white neighborhoods, conforming to the court desegregation decree.

Thomas M. Gray

COMING

The collected poems of James Wright Reviewed by Babette Deutsch

Erstwhile Liberal

Sirs:

The New Republic quite rightly criticized Hubert Humphrey's insistence upon his "right" to tell a blatant lie in order to circumvent Wisconsin's primary law, but his contempt for the people's right to choose in primary elections is, unfortunately, nothing new. Indeed, Mr. Humphrey very carefully waited to declare his candidacy in 1968 until the day after the final primary filing deadline, in order to chicken out of a primary that might test his stand on Vietnam.

Such maneuvers are, no doubt, cagey politics, but they reinforce Mr. Humphrey's reliance upon the power brokers of the party at a time when leaders like George McGovern are trying to make the party more responsive to the voters themselves. And it is certainly disheartening to see an erstwhile liberal like Hubert Humphrey displaying a contempt for the law unmatched, perhaps, this side of the Attorney General.

James M. Cole

United Fruit

Sirs:

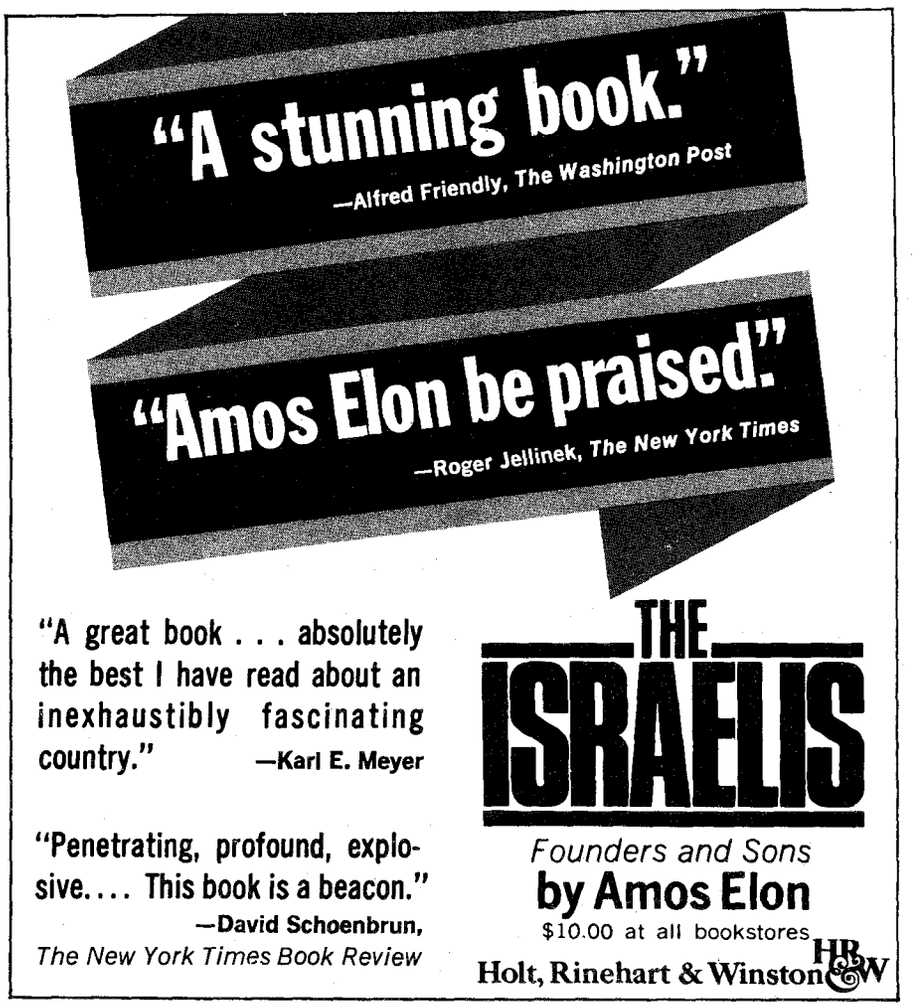
In Peter Barnes' article, "Water, Water for the Wealthy" (May 8), it was stated that the United Fruit Company is a large land owner in the Imperial Valley of California. United Fruit wishes it known that it leases – not owns – 18,265 acres in California, including 6400 in the Imperial Valley.

The Editors

Kauffmann, *from page 24*

ple might give him funds to do plays, in return for the right to film the productions for broadcast. This method of TV subsidy, as I've seen, has already worked effectively in Britain.

Later, a prominent young critic tells me that the "Kipphardt case" is only the current symptom of a recurrent trouble. Almost all significant German theaters receive substantial support from city or state government or both, so artists who are radical politically or esthetically have their troubles. Strangely, his remarks make me envious. Compared to the US,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this seems a healthy way to have theater troubles. At least they occur in a theater *system*, in a society that is committed to concern about its theater.

Hamburg. A poorly acted production of Shaw's *Heartbreak House* at the Thalia, also afflicted with "designer-itis," the compulsion to use startling settings, whether or not they are apt.

A dress rehearsal of Molnar's *Olympia* at the same theater, with two old favorites, Hans Jaray and Paula Wessely, playing with the ease that looks easy to almost everyone but actors; and who help to keep this old soap-bubble afloat.

Two productions at the Staatsoper, *Così fan tutte* and *Don Pasquale*, are disappointingly inferior to the high level of this opera company, as seen four years ago here and in New York. *Pasquale* fussily and obtrusively staged by Gian-Carlo Menotti.

A charming evening at the Hansa, the last variety theater in Europe, which has been going for 75 years. Biedermeier furnishings, steeply banked rows of armchairs with small tables before them, on each table a button to summon your waiter. When the curtain rises on the small stage, the first thing you see is a painted drop, advertising the theater's huge and inexpensive open sandwich. Then the long show begins (with dancing bears) and, like the sandwich, is very good. Have *you* ever seen a man stand on his head, then spin like a top?

A fascinating production of Aristophanes' *Lysistrata* at the Schauspielhaus. Here the original scenery and costumes, by Erwin W. Zimmer, help the concept enormously. We see a huge curtain of unbleached muslin that drapes forward over the apron, completely hiding the stage. When it rises, we see wide steps leading up to a sort of low rectangular tunnel, all covered in leopard skin. The general effect is rough, strong, primal, an environment that blends perfectly the necessary sophistication and rudeness. This is further borne out by the costumes, which look like weathered ritual garments, and the half-masks that all the actors wear. Dieter Dorn's direction is particularly fine with the two choruses, the old men and old women. I could have done without some cuteness supplied by two nonspeaking *compéres*, but generally this was a vigorous, unified performance.

I note (as I'm to note again elsewhere) that this complex production is only one item in a busy season's repertoire.

Like many large theaters, this one has a smaller theater in which experimental work is done. The Malersaal of the Schauspielhaus presents two short plays by Wolfgang Bauer who, like Peter Handke, is a young Austrian and whose name is often coupled with Handke's at the head of the list of important young dramatists. *Film und Frau*, the longer piece, is too long: a sometimes funny comedy about Hollywood's effect on sex fantasy and sex life, with some striking visual images. *Party for Six* (the title is in English) is set in Graz. The dialogue is in thick Austrian dialect and quite beyond me, but everything is clear enough anyway. (As a German friend confirms later.)

The set is a dowdy living room. A young man is giving a party. His guests arrive, two men and three girls, and they all go into the next room and shut the door! We hear music and talk and laughter. Occasionally one of them comes out to go to the bathroom, and we see a small upstairs window light up. Or more bottles are fetched. Or a boy and a girl come out to grapple, the boy is repulsed and lies on the sofa in the dark, sulking, till someone else comes out.

It's a series of short scenes, no story, just trivial incidents; but by the oblique view, the sharp selection of detail, and the tart curtailment of scenes, Bauer builds a mosaic of minutiae – a witty, sympathetic picture of small-town frustrations. For the curtain call, I see only five of the six actors. Puzzling. Then I notice the bathroom window is lit up.

More cities, more theaters, more about German film bankruptcy to come.

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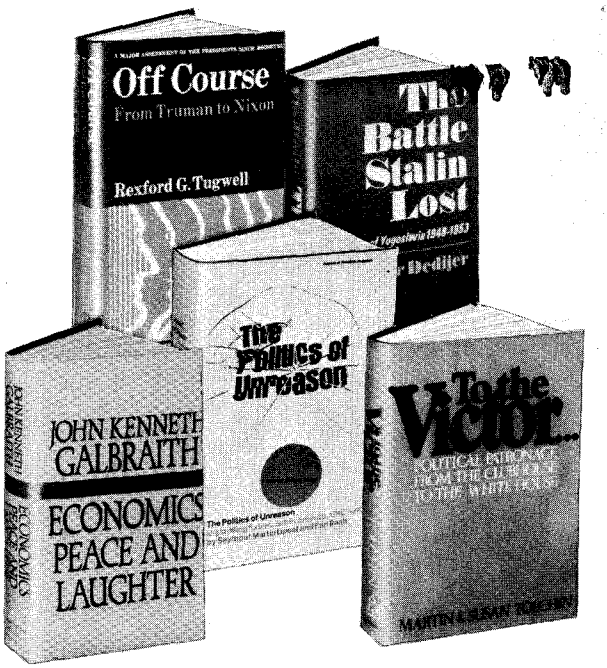

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